Current legislative digest, Ontario; an index-digest of current legislation

(II)

3rd session, 29th Legislature

p. 170 -

RR

Ministry of Revenue
Ontario

Margaret Scrivener
Minister

T.M. Russell
Deputy Minister

Corporations Tax Branch

Interpretation Bulletin

Number: L-2 July 4, 1977

SUBJECT: Ontario Political Contributions - Section 100b

GENERAL

1. This section allows credits for political contributions in Ontario commencing with fiscal years ending after February 12, 1975. The contributions eligible are those which are valid under The Election Finances Reform Act (1975) and the credit is in the form of a deduction in calculating taxable income.

SCOPE

2. To be eligible contributions must be made to registered constituency associations, to registered parties, or to registered candidates at an election of a member, or members to serve in the Legislative Assembly of Ontario. The contribution must be valid under The Election Finances Reform Act and claims for a deduction in respect of the contribution must be accompanied by an official receipt. Note that only contributions to *Ontario* parties and constituency associations or to candidates in an *Ontario* election are eligible. Ontario does not allow credit for contributions in respect of federal elections or federal political parties. Credits from federal income tax under section 127(3) of the Income Tax Act (Canada) may be allowed for federal contributions by Revenue Canada, which does not allow credits for Ontario contributions.

ELECTION FINANCES REFORM ACT (1975)

3. Under this Act a person, corporation, or union, may contribute in any year up to $2,000 to a provincial party. They may contribute up to $500 to any constituency association, but their total contributions to constituency associations of the same party may not exceed $2,000.

4. During an election they are permitted to make additional contributions, up to an additional $2,000 to a provincial party. They may also contribute up to $500 to any candidate in the election, but their total contributions to candidates of the same party may not exceed $2,000.

The following table sets out these limits:

Maximum Contributions

	To a Provincial Party	To Constituency Associations Each	To Constituency Associations Total	To Candidates Each	To Candidates Total
Annually	$2,000	$500	$2,000	NIL	
Extra during a campaign period	$2,000	NIL		$500	$2,000

For further information concerning The Election Finances Reform Act, please contact:

The Commission on Election Contributions
and Expenses,
Britannica House,
151 Bloor Street West,
8th Floor,
Toronto, Ontario,
M7A 1A2.

Telephone: (416) 965-0455

CREDIT ALLOWED

5. Whereas the credit allowed to individuals for Ontario political contributions is calculated as a deduction from tax up to a maximum of $500 (on a contribution of $1,150 or more), and corresponds to the equivalent deduction from federal tax for federal contributions, the deduction allowed to corporations for Ontario political contributions is in the form of a deduction from income. When calculating taxable income the maximum contribution that can be claimed in a fiscal year is $4,000. This claim must be supported by properly completed official receipts issued under the authority granted by the Commission on Election Contributions and Expenses.

EXCESS CARRIED FORWARD

6. Where the available taxable income is less than the amount of eligible political contributions, the balance of contributions in excess of the taxable income may not be used to create a loss. However, the unclaimed contributions may be carried forward and claimed in any future years in which there is sufficient taxable income. This carry forward is available only to corporations.

ADDITIONAL CALCULATION WHEN INCOME ALLOCATED OUTSIDE ONTARIO

7. Under section 103 corporations which have taxable income earned in Canada in jurisdictions other than Ontario make a deduction from the tax that they would otherwise pay which corresponds to the proportion of income earned in the other jurisdiction. Because of the application of this section, corporations in this situation would not obtain the full benefit of the deduction allowed for political contributions without an additional calculation. Subsection (3)(b) of section 100b describes an additional deduction that is made by such corporations to enable them to obtain the full benefit. This additional calculation is shown in Part II of the illustration.

ILLUSTRATION

8. The example which follows illustrates the calculation of tax payable by a corporation with the maximum contributions of $4,000 and an allocation of 40% of taxable income outside Ontario. Corporations with no allocation of income outside Ontario would of course ignore the additional calculation under section 100b(3)(b).

Part I

Taxable Income of the corporation			$24,000
DEDUCT:			
Election Contribution section 100b(3)			
Amount contributed	(a)	$4,000	
*Additional amount allowed by clause	(b)	2,666	
			6,666
Taxable Income after deductions for election contributions			$17,334
Tax thereon (section 102) at 12%			$ 2,080
DEDUCT:			
Allocation (section 103)			
Allocation outside Ontario - 40%			
40% of $17,334 = $6,933			
12% of $6,933			832
Ontario Tax Payable			$ 1,248

Part II

*Calculation of Additional Amount Allowed by the Formula

Taxable Income outside Ontario = 40% of $24,000	=	$ 9,600
Taxable Income less that figure	=	14,400

Formula is:

$$\frac{\text{Amount Contributed x Taxable Income outside Ontario}}{\text{Taxable Income } \underline{\text{minus}} \text{ Taxable Income outside Ontario}}$$

$$= \$4,000 \times \frac{\$9,600}{\$14,400} \qquad \$2,666$$

Part III

Proof

Taxable Income	$24,000
LESS: Allocation outside Ontario	9,600
Taxable Income allocated to Ontario	14,400
LESS: Amount contributed	4,000
Taxable Income Ontario	$10,400
Ontario Tax Payable 12% of $10,400	$1,248

Ontario
Ministry of Revenue
Lorne Maeck
Minister
T.M. Russell
Deputy Minister

Corporations Tax Branch

Interpretation Bulletin

Number L-4 August 14, 1978

SUBJECT: Depletion and Resource Allowances

GENERAL

The Ontario Budget of April 19, 1977 proposed that the federal income tax provisions be paralleled in respect of oil and gas income (including income from oil sands) but not for mining incomes. Part II (sections 201 to 209) was added to Ontario Regulation 350/73 to implement these changes. Regulation 147/78 was filed on March 7, 1978.

OIL AND GAS CORPORATIONS

EARNED DEPLETION SYSTEM

The federal depletion allowance was changed in May, 1974 from the automatic depletion allowance to an earned depletion system of $1 for every $3 of eligible expenditures, up to a maximum of 25% of resource profits. Ontario has paralleled this system effective for the first taxation year of corporations ending after April 19, 1977.

DEDUCTION ALLOWED (REGULATION SECTION 203(a))

The deduction from income will be the lesser of:

- 25% of resource profits from oil and gas, and
- earned depletion base calculated for Ontario purposes.

RESOURCE PROFITS FROM OIL AND GAS (REGULATION SECTION 201(1)(g))

Generally, resource profits from oil and gas operations include the following:

- proceeds from the sale of oil and gas resource property in Canada (after deducting any reserve allowed by section 18 for proceeds not received until a subsequent year),
- income from oil and gas production in Canada,
- rentals and royalties from oil and gas property,

less

- losses from sources described in the first two items above,
- Canadian exploration and development expenses.

EARNED DEPLETION BASE (REGULATION SECTION 201(1)(d))

The earned depletion base is calculated at 33 1/3% of the following:

- three times a portion of the federal base at the end of the last taxation year ending before April 20, 1977, determined by formula (see below),
- Canadian exploration and development expenses incurred in oil and gas exploration during a taxation year ending after April 19, 1977,

  <u>except</u>

  - interest capitalized as Canadian exploration and development expenses,
  - cost of oil and gas resource property,
  - Canadian exploration and development expenses incurred after coming into production,
  - share of any Canadian exploration and development expenses from an association, partnership or syndicate, which would not otherwise be included,
  - Canadian exploration and development expenses renounced by a joint exploration corporation in favour of another corporation,
  - Canadian exploration and development expenses incurred in exchange for shares,
- Class 10 and Class 28 assets that relate to oil and gas and also qualify for federal depletion purposes,

less

- previous years' depletion allowances claimed for Ontario purposes
- 33 1/3% of capitalized interest in respect of Class 10 or Class 28 assets included in the base.

FORMULA (REGULATION SECTION 201(2))

The formula for the portion of the federal base is:

$$\text{federal earned depletion base} \times \frac{\text{expenditures after November 7, 1969 that would have qualified for Ontario purposes (as above)}}{\text{all expenditures after November 7, 1969 that qualified for federal purposes}}$$

PRORATION

Proration is required for the taxation year that includes April 19, 1977. This is done by calculating the depletion allowance firstly under the new provisions (earned depletion) and secondly under the old provisions (automatic depletion) as they stood before this regulation was filed. The amount arrived at in the first calculation is reduced in the proportion that the number of days after April 19, 1977 bears to the total number of days in that taxation year. The amount arrived at in the second calculation is reduced in the proportion that the number of days before April 20, 1977 bears to the total number of days. The depletion allowance for the taxation year is the sum of the two reduced amounts.

RESOURCE ALLOWANCE (REGULATION SECTION 209)

In June, 1975 the federal government introduced a resource allowance of 25% of resource profits which can be claimed by any resource company with income from oil or gas or mining. Ontario has paralleled this resource allowance with respect to resource profits from oil and gas operations only, with the same adjustments as for federal purposes; i.e. the computation of resource profits is to exclude

- proceeds from the sale of Canadian oil or gas resource property,
- Canadian exploration and development expenses, and
- interest deducted in arriving at resource profits.

The Ontario provision came into force on April 20, 1977.

PRORATION

Proration is required for the taxation year that straddles April 19, 1977. The amount deductible will be that proportion of the resource allowance that the number of days after April 19, 1977 bears to the total number of days in that taxation year.

FRONTIER OIL AND GAS EXPLORATION (REGULATION SECTION 207)

The Budget also proposed that the additional depletion allowance for frontier oil and gas exploration which was introduced in the federal Budget of March 31, 1977 should be paralleled.

A corporation participating in oil and gas exploration may deduct each year from its income from any source up to 66 2/3% of its share of the costs that are in excess of $5 million incurred in drilling an oil or gas well. This additional allowance applies only to costs incurred between March 31, 1977 and April 1, 1980.

The undeducted balance of the costs can be carried forward to subsequent taxation years. The provision applies to all taxation years ending after April 19, 1977.

MINING CORPORATIONS

GENERAL

Corporations with income from mining production or processing, or from rentals and royalties based on such production, can still claim an automatic depletion allowance. They cannot claim the earned depletion allowances or the resource allowances which are available only to oil and gas corporations.

AUTOMATIC DEPLETION SYSTEM (REGULATION SECTION 203(b))

The deduction from income will be 33 1/3% of resource profits from mining operations.

RESOURCE PROFITS FROM MINING OPERATIONS (REGULATION SECTION 201(1)(h))

Generally, resource profits from mining operations include the following:

- proceeds from the sale of mining resource property,
- income from mining production,
- income from processing ores up to the prime metal stage,
- rentals and royalties related to mining,

less

- losses from sources described in the last three items above,
- Canadian exploration and development expenses deducted from income.

Ministry of Revenue
Ontario
Lorne Maeck
Minister
T.M. Russell
Deputy Minister
Corporations Tax Branch

Interpretation Bulletin

Number L-7 January 22, 1979

SUBJECT: Capital Tax - General Information, Special Cases

GENERAL INFORMATION

INTRODUCTION

This bulletin is one of five on the subject of Capital Tax. The five bulletins cover the following aspects of this subject:

- Number L-7 - General Information, Special Cases
- Number L-8 - Inclusions in Paid-up Capital
- Number L-9 - Inclusions in Paid-up Capital (continued)
- Number L-10 - Goodwill Allowance, Deferred Mining Exploration and Development Expenses, Investment Allowance
- Number L-11 - Numerical Example

These bulletins supersede the one distributed in November, 1974. They are being issued to assist corporations in calculating the Capital Tax payable under Part III of The Corporations Tax Act, 1972.

WHO PAYS

Every corporation (including a non-share capital corporation for taxation years ending after December 7, 1977) which is subject to Ontario corporation income tax must also pay an annual capital tax on the use of capital in Ontario. Even though a corporation does not have to pay income tax for any particular year because of losses incurred, it must still pay capital tax.

RATES

If corporation's taxable paid-up capital in Ontario is:	Capital tax is:
Over $100,000	3/10 of 1% of total amount
Over $50,000 and up to $100,000	fixed amount of $100
$50,000 or less	fixed amount of $50

MINIMUM

The minimum annual capital tax is $50.

SHORT TAXATION YEARS

Some corporations with short taxation years (less than 365 days) are allowed to prorate the capital tax in proportion to the number of days in that year, but they must pay a minimum of $50. Proration is available only to those corporations that otherwise would pay $100 or more in capital tax.

Proration is allowed for all taxation years that are less than 365 days except those that do not end on the same date each year but have been accepted as full taxation years for assessment purposes. An example of such an exception is a corporation that may end its taxation year on December 28, or 29, or 30, or 31, varying from year to year, depending on its own business circumstances and preferences regarding the physical stock-taking of its inventory.

SPECIAL CASES

BANKS - SECTIONS 126(2), 127(2a), 131(2), 132(2)

The taxable paid-up capital of a bank includes:

- paid-up capital stock,
- rest account,
- all reserves except those allowed as a deduction from income in computing taxable income,
- undivided profits.

The deductions from paid-up capital for goodwill, discounts on shares and investments do not apply to banks.

The capital tax rate for banks is 3/5 of 1% effective for taxation years ending after April 19, 1977.

LOAN AND TRUST CORPORATIONS - SECTIONS 126(3), 127(2a), 131(2), 132(2)

The taxable paid-up capital of a corporation registered under The Loan and Trust Corporations Act includes:

- paid-up capital stock,
- earned, capital and any other surplus,
- all reserves except those allowed as a deduction from income in computing taxable income.

The deductions from paid-up capital for goodwill, discounts on shares and investments do not apply to loan and trust corporations.

The capital tax rate for loan and trust corporations is 3/5 of 1% effective for taxation years ending after March 7, 1978.

PARTNERSHIPS

Corporations that have entered into a partnership or joint venture agreement must forward the complete partnership or joint venture financial statements. Each corporate partner must include in the computation of paid-up capital, its share of those liabilities of the partnership or joint venture that would otherwise be included in the paid-up capital of the corporation. For example, a mortgage liability of the partnership would normally be attributed to each partner in proportion to the capital distribution ratio of the partnership.

The proportionate share of the liabilities of the partnership or joint venture to be included are drawn from the partnership's or joint venture's balance sheet at the date closest to the fiscal year end of the corporate partner.

NON-RESIDENT CORPORATIONS - SECTION 125, 128, 129, 130

Special rules are provided for the computation of the Paid-up Capital Employed in Canada by corporations that are incorporated outside Canada.

Paid-up Capital Employed in Canada will be the greater of:

(a) the taxable income earned in Canada (calculated on a Branch basis) capitalized at 8%

or

(b) the amount due to the head office of the corporation ("home office" account) as at the taxation year end plus all other indebtedness that would normally be included in paid-up capital by a resident corporation (e.g. mortgages, advances from other corporations, etc.).

Non-resident corporations are not required to pay capital tax if they are liable for Ontario income tax only in respect of the disposition of taxable Canadian property that was property situated in Ontario as prescribed by regulation (section 134).

Where a non-resident corporation carries on its business entirely in Canada, its Taxable Paid-up Capital Employed in Canada is calculated as though it were a corporation resident in Canada. The provisions applicable to non-residents, as described above, do not apply.

CREDIT UNIONS, FAMILY FARM CORPORATIONS, MORTGAGE INVESTMENT CORPORATIONS - SECTION 135(2)

These corporations are subject to an annual capital tax of $50 only.

CERTAIN CORPORATIONS EXEMPT FROM INCOME TAX - SECTION 135(1)

Certain corporations which are exempt from income tax were subject to a reduced capital tax of $5 annually. This reduced tax was repealed effective for taxation years ending after December 7, 1977 and these corporations no longer have to file annual CT23 returns.

Examples of exempt corporations are:

crown corporations (unless prescribed), boards of trade, chambers of commerce, registered charities, non-profit corporations, limited-dividend housing corporations, labour organizations.

MUTUAL FUND CORPORATIONS, INVESTMENT CORPORATIONS, NON-RESIDENT OWNED INVESTMENT CORPORATIONS, FOREIGN BUSINESS CORPORATIONS, CO-OPERATIVE CORPORATIONS

There are no special rules governing the computation of capital tax; therefore, these corporations are treated as ordinary corporations for capital tax purposes.

Les bulletins sont disponibles en français sur demande à la Direction de l'impôt sur les corporations, Ministère du Revenu, Queen's Park, Toronto, Ontario M7A 1Y1 Téléphone: 965-1160

Ministry of Revenue
Ontario
Lorne Maeck
Minister
T.M. Russell
Deputy Minister

Corporations Tax Branch

Interpretation Bulletin

Number L-7R August 15, 1980

Les bulletins sont disponibles en français sur demande à la Direction de l'impôt sur les corporations, Ministère du Revenu, Queen's Park, Toronto, Ontario M7A 1Y1 Téléphone: 965-1160

SUBJECT: Capital Tax - General Information, Special Cases

GENERAL INFORMATION

INTRODUCTION

Bulletins L-7 to L-11 containing guidelines regarding the computation of Ontario Capital Tax were published on January 22, 1979. Changes have become necessary as a result of the Ontario Budget of April 22, 1980 and an up-dating of Branch policy. Bulletins L-7 to L-10 have therefore been revised as Bulletins L-7R to L-10R. Bulletin L-11 has not been revised since it was felt that a numerical example showing the completed capital tax portion of the CT23 return for any one year could be used as a general guideline in completing subsequent years returns taking into account, of course, current legislation and Branch policy.

The five bulletins cover the following aspects of capital tax:

- Number L-7R - General Information, Special Cases
- Number L-8R - Inclusions in Paid-up Capital
- Number L-9R - Inclusions in Paid-up Capital (continued)
- Number L-10R - Goodwill Allowance, Deferred Mining Exploration and Development Expenses, Investment Allowance
- Number L-11 - Numerical Example

These bulletins are being issued to assist corporations in calculating the capital tax payable under Part III of The Corporations Tax Act, 1972.

WHO PAYS

Generally, every corporation (including a non-share capital corporation for taxation years ending after December 7, 1977) which is subject to Ontario corporation income tax must also pay an annual capital tax on the use of capital in Ontario. Even though a corporation does not have to pay income tax for any particular year because of losses incurred or other reasons reducing taxable income or income tax payable to NIL, it must still pay capital tax. Corporations which are exempt from capital tax are: insurance corporations; small business development

corporations; and certain non-profit corporations which are also exempt from income tax.

RATES

Effective for taxation years ending after April 22, 1980, the following reduced rates apply to small businesses.

Corporations with taxable paid-up capital (before allocation) of:	pay the lesser of:	and the tax otherwise payable of:
up to $100,000	$50	$50 to $300
over $100,000 up to and including $1,000,000	$100	up to $3,000
over $1,000,000 to $1,200,000	3/10 of 1% of taxable paid-up capital <u>minus</u> 1.45% of ($1.2 million less taxable paid-up capital)	up to $3,600

Corporations with taxable paid-up capital (before allocation) over $1,200,000 will continue to pay at the rate of 3/10 of 1%.

MINIMUM

The minimum annual capital tax for non-exempt corporations is $50.

SHORT TAXATION YEARS

Some corporations with short taxation years (less than 365 days) are allowed to prorate the capital tax in proportion to the number of days in that year, but they must pay a minimum of $50. Proration is available only to those corporations that otherwise would pay $100 or more in capital tax.

Proration is allowed for all taxation years that are less than 365 days except those that do not end on the same date each year but have been accepted as full taxation years for assessment purposes. An example of such an exception is a corporation that may end its taxation year on December 28, or 29, or 30, or 31, varying from year to year, depending on its own business circumstances and preferences regarding the physical stock-taking of its inventory.

Corporations in existence for their full taxation year which maintain an Ontario permanent establishment for only a portion of that year are <u>not</u> eligible for proration.

SPECIAL CASES

BANKS - SECTIONS 126(2), 127(2a), 131(2), 132(2)

The taxable paid-up capital of a chartered bank includes:

- paid-up capital stock,
- rest account,
- all reserves except those allowed as a deduction from income in computing taxable income,
- undivided profits.

The deductions from paid-up capital for goodwill, discounts on shares and investments do not apply to banks.

The capital tax rate for banks is 4/5 of 1% effective for taxation years ending after April 10, 1979.

LOAN AND TRUST CORPORATIONS - SECTIONS 126(3), 127(2a), 131(2) 132(2)

The taxable paid-up capital of a corporation registered under The Loan and Trust Corporations Act includes:

- paid-up capital stock,
- earned, capital and any other surplus,
- all reserves except those allowed as a deduction from income in computing taxable income.

The deductions from paid-up capital for goodwill, discounts on shares and investments do not apply to loan and trust corporations.

The capital tax rate for loan and trust corporations is 3/5 of 1% effective for taxation years ending after March 7, 1978.

PARTNERSHIPS - SECTION 126(4)

Corporations that have entered into a partnership or joint venture agreement must enclose the complete partnership or joint venture financial statements with their tax returns. Each corporate partner must include in the computation of paid-up capital, its share of those liabilities of the partnership or joint venture that would otherwise be included in the paid-up capital of the corporation. For example, a mortgage liability of the partnership would normally be attributed to each partner in proportion to the profit-sharing ratio of each partner in the partnership.

Paid-up capital is measured at the close of the taxation year of the taxpayor corporation. When the fiscal year of the partnership does not coincide with the taxation year of the corporate partner there may be a hardship in obtaining a partnership balance sheet at the close of the corporate partner's taxation

year. In order to facilitate filing, the Branch will accept the partnership's financial statements at the date closest to the taxation year end of the corporate partner for newly formed partnerships and joint ventures. For example, a partnership's fiscal year may run from April 1, 1979 to March 31, 1980 whereas the corporate partner's taxation year may end on December 31, 1979. Although the Branch would prefer a partnership balance sheet as at December 31, 1979, where this is not available, the partnership balance sheet as at March 31, 1980 would be acceptable for capital tax purposes only.

Partnerships which have been in existence for some time need not change past filing practices as long as consistency in reporting is followed each year. In the example noted above, the corporate partner may file the partnership's balance sheet as at March 31, 1979 for purposes of calculating capital tax for its taxation year ended December 31, 1979 providing such practice has been consistently applied in prior years. If any material changes arise, the Branch may insist on partnership accounts as at December 31, 1979 or failing this, a partnership balance sheet as at the date closest to the corporate partner's taxation year; i.e. March 31, 1980.

Limited partnerships - For details regarding capital tax computations for limited partnerships, including a numerical example, reference should be made to Interpretation Bulletin Number L-12 issued October 15, 1979.

NON-RESIDENT CORPORATIONS - SECTION 125, 128, 129, 130, 133a(3)

Special rules are provided for the computation of the Paid-up Capital Employed in Canada by corporations that are incorporated outside Canada.

Paid-up Capital Employed in Canada is the greater of:

(a) the taxable income earned in Canada (calculated on a Branch basis) capitalized at 8%

or

(b) the amount due to the head office of the corporation ("home office" account) as at the taxation year end plus all other indebtedness that would normally be included in paid-up capital by a resident corporation (e.g. mortgages payable, advances from other corporations, etc.).

Effective for taxation years ending after April 22, 1980, non-resident corporations may qualify for the flat $50 or $100 capital tax or a reduced tax based on the notch provision which is payable by resident corporations under section 133a, where the world taxable paid-up capital does not exceed $1,200,000.

Non-resident corporations qualifying for this low rate of capital tax under section 133a(3) are not subject to the capital tax calculated under the special rules above. In determining whether taxable paid-up capital exceeds $1,200,000, world paid-up capital must be used in place of the Canadian branch paid-up capital.

Non-resident corporations are not required to pay capital tax if they are liable for Ontario income tax only in respect of the disposition of taxable Canadian property situated in Ontario as prescribed by regulation 717 (section 134).

Where a non-resident corporation carries on its business entirely in Canada, its Taxable Paid-up Capital Employed in Canada is calculated as though it were a corporation resident in Canada. The provisions applicable to non-residents, as described above, do not apply.

For a summary of Ontario Corporations Tax for Non-Residents refer to Interpretation Bulletin Number L-13R.

CREDIT UNIONS, FAMILY FARM CORPORATIONS, FAMILY FISHING CORPORATIONS, MORTGAGE INVESTMENT CORPORATIONS - SECTION 135(2)

These corporations are subject to an annual capital tax of $50 only.

For details regarding Family Farm Corporations and Family Fishing Corporations reference should be made to Interpretation Bulletin Number L-14 issued May 12, 1980.

CONDOMINIUMS AND CO-OPERATIVE HOUSING CORPORATIONS

Condominium and co-operative housing corporations which are exempt from income tax are also exempt from capital tax.

For further details reference should be made to the special Information Bulletin on Condominium and Co-operative Housing Corporations issued in April, 1980.

CERTAIN CORPORATIONS EXEMPT FROM INCOME TAX - SECTION 135(1)

Certain corporations which are exempt from income tax were subject to a reduced capital tax of $5 annually. This reduced tax was repealed effective for taxation years ending after December 7, 1977 and these corporations no longer have to file annual CT23 returns.

Examples of exempt corporations are:

crown corporations (unless prescribed), boards of trade, chambers of commerce, registered charities, non-profit corporations, limited-dividend housing corporations, labour organizations.

MUTUAL FUND CORPORATIONS, INVESTMENT CORPORATIONS, NON-RESIDENT-OWNED INVESTMENT CORPORATIONS, FOREIGN BUSINESS CORPORATIONS, CO-OPERATIVE CORPORATIONS

There are no special rules governing the computation of capital tax; therefore, these corporations are treated as ordinary corporations for capital tax purposes.

Ministry of Revenue
Ontario
Lorne Maeck
Minister
T.M. Russell
Deputy Minister

Corporations Tax Branch

Interpretation Bulletin

Number L-8R August 15, 1980

SUBJECT: Capital Tax - Inclusions in Paid-up Capital

GENERAL

Paid-up capital as used for capital tax purposes is a wider concept than just the paid-up capital stock or share capital of a corporation set out in the articles of incorporation, letters patent or charter. In order that taxpayers may have a better understanding of this concept, examples of the various items that comprise paid-up capital are shown below.

For convenience, the items in the examples are dealt with in a similar order to item 6 of the CT23 tax return. The examples are continued in Bulletin Number L-9R.

PAID-UP CAPITAL STOCK

This is the dollar amount of the issued share capital, as shown on a corporation's audited balance sheet prepared for the shareholders. It includes the value given to all types of issued shares; common shares, preferred shares and special category shares.

The following amounts must be included:

- the grossed-up value of shares issued for intangibles such as goodwill,
- premiums received from shareholders on the issue of shares.

The following amounts may be excluded:

- subscriptions receivable from shareholders on shares issued to them but not fully paid for,
- discounts allowed to shareholders on the issue of shares.

EARNED SURPLUS

The earned surplus, or retained earnings, of a corporation represents the accumulated annual profits, capital and other gains, and all other items of income that are available for distribution to the shareholders as dividends. A deficit (negative earned surplus) may be deducted from paid-up capital.

The following amounts may be excluded from paid-up capital:

- current income taxes paid or payable to all jurisdictions,
- dividends paid or payable to shareholders of all classes, if they are paid within a year from the fiscal year-end.

CAPITAL, APPRAISAL OR OTHER SURPLUSES

Some of the most common surpluses in this category arise from:

- non-taxable portion of capital gains,
- contributions of assets to the company,
- appraisals of assets,
- earned but unappropriated profits of subsidiaries,
- revaluation of investments in excess of cost,
- government grants or forgiveable loans, regardless of how they are shown on the company's books or balance sheet.

LOANS AND ADVANCES FROM OTHER CORPORATIONS

This includes both sums loaned and credits advanced to the corporation by any other corporation, whether secured or not.

Examples of the type of liabilities falling under this category are:

- loans of cash from any other corporation,
- loans of cash from banks, trust, finance or loan corporations,
- amounts owing to other corporations even if cash was not advanced; e.g. amounts owing to a corporation for the purchase of its assets or shares,
- long-term credits provided by a <u>related</u> corporation for the purchase of inventories from the <u>related</u> corporation.

For taxation years ending on or after December 8, 1977, unsecured loans or advances from a corporation <u>without share capital</u> are included. Bill 88/77 changed the definition of corporation to parallel the federal definition which includes corporations without share capital. For taxation years ending before December 8, 1977, the definition of corporation included only those corporations that had share capital. For these taxation years, unsecured loans or advances from a corporation without share capital are not included in paid-up capital.

Obligations of the <u>same nature</u> due to, and from, the <u>same company</u> may be netted if that company is an associate of or affiliated to the taxpayer corporation. For example, a subsidiary corporation may owe its parent corporation $1,000,000 which

had been advanced to the subsidiary as a loan to cover capital acquisitions over the next 12 months. At the same time, the subsidiary may have advanced monies to its parent company in the form of a small loan of $200,000 as a temporary measure to overcome a cash shortage. These loans may be netted and only $800,000 included in the subsidiary's paid-up capital.

Generally, ordinary trade accounts payable to other corporations for the purchase of goods or services are not included.

Trade accounts payable to related corporations are not included if they are payable within the normal terms of trade. The normal terms of trade are those generally used in the industry to which the corporation belongs and may vary (e.g. 30, 60 or 90 days) for different industries. Where such accounts have been outstanding beyond the terms of trade granted by the supplier to its ordinary trade customers <u>or for more than 120 days</u> prior to balance sheet date, <u>whichever is the shorter</u>, they will always be considered advances and are to be included in paid-up capital.

Similarly trade accounts receivable from related companies outstanding beyond normal terms of trade or 120 days, whichever is shorter, are allowed as investments for investment allowance purposes.

LOANS AND ADVANCES FROM SHAREHOLDERS

These include both cash advances and credits made available by shareholders either directly or indirectly or by any person related to a shareholder. For example, cash may be advanced to a corporation directly by a shareholder or indirectly by him through the use of trust funds which he administers on behalf of his family. Persons related to a shareholder are those who do not deal at arm's length with the shareholder; for example, a spouse or child.

Loans and advances to shareholders may only be netted from these liabilities where such amounts are due to and receivable from the same shareholder.

BANK LOANS AND OVERDRAFTS AND BANKERS' ACCEPTANCES

All loans from banks must be included in paid-up capital. Generally, bank overdrafts are not considered to be bank loans. However, the portion of bank overdrafts in excess of the amount required to meet outstanding cheques is considered to be a bank loan and included in paid-up capital.

Bankers' acceptances issued to a supplier for the purchase of inventory for its normal terms of trade are generally treated as trade accounts payable and, therefore, are not included in the issuer's paid-up capital. For this reason, creditors holding these bankers' acceptances <u>cannot</u> claim them as investments for investment allowance purposes.

Bankers' acceptances used as a means of obtaining short-term financing are treated as loans payable and must be included

in paid-up capital if issued to other corporations. Accordingly, creditors holding these bankers' acceptances can claim them as investments for investment allowance purposes.

Where the amount is outstanding beyond the term of the acceptance it must be included in the issuer's paid-up capital as a bank loan.

LIEN NOTES PAYABLE

The full amounts of lien notes are included in paid-up capital by all corporations. Lien notes represent debt obligations which are secured by a corporation's property. Examples are:

- lien notes payable to acquire fixed assets such as machinery and equipment,

- lien notes payable by automobile dealers to acquire inventories of new automobiles.

Some corporations will disclose lien notes payable on the balance sheet under both current liabilities and long-term liabilities; the current portion payable within 12 months and the deferred portion payable after 12 months. Both of these amounts must be included in paid-up capital.

CAPITALIZATION OF LEASES

LESSEES

The CICA Handbook published by the Canadian Institute of Chartered Accountants recommends that for accounting purposes certain leased assets be treated as a purchase (capital lease) rather than as a rental and that "the lessee should account for a capital lease as an asset and an obligation". However, for income tax purposes, the Branch will treat leased assets as a purchase only in cases where the lease is considered to be a sale/purchase transaction as outlined in Revenue Canada Bulletin IT-233 and the lessee is permitted to claim capital cost allowance on the asset.

If a corporation has capitalized leases in its books as recommended by the CICA but is not entitled to claim capital cost allowance, the "obligations under capital leases" should not be included in paid-up capital for capital tax purposes. Also, "assets on capital leases" should be removed from net book value of depreciable assets before making the adjustments to paid-up capital and total assets to arrive at the difference between net book value (NBV) and undepreciated capital cost (UCC).

Where the actual cumulative lease payments deducted for income tax purposes are less than the corresponding cumulative amounts (depreciation and interest) expensed for financial statement purposes, the resultant difference is a "reserve" under section 126(1)(c). Such a reserve must be added in the calculation of paid-up capital. Similarly, where tax deductions exceed book deductions, the Branch, by concession, allows the difference

to be deducted from paid-up capital. This cumulative difference at any year-end can be ascertained readily by a comparison of the "assets" and "obligations" shown on the balance sheet.

Where "obligations under capital leases" exceed "assets on capital leases", the difference represents amounts deducted for book purposes which are not allowed for income tax purposes and should be added to paid-up capital and total assets. Conversely, where "assets" exceed "obligations" the difference should be deducted from paid-up capital and total assets.

In cases where the lease transaction is tantamount to a purchase and is treated as a purchase for income tax purposes (for guidelines, see Revenue Canada Interpretation Bulletin IT-233) "obligations under capital leases" should be included in paid-up capital and "assets on capital leases" should be treated in the same manner as other assets owned by the taxpayer.

TOTAL ASSETS FOR INVESTMENT ALLOWANCE PURPOSES

Where a lessee corporation has included in assets, amounts representing "assets on capital leases", such amounts must be deducted from total assets to arrive at the figure to be used as "total assets for investment allowance purposes".

LESSORS

The CICA Handbook release also contains recommendations regarding the accounting treatment of leased assets which are capital leases to the lessee. "Investments" in such leases by lessors do not qualify for investment allowance for capital tax purposes.

Lien notes financing assets leased to customers should be included in paid-up capital.

Where the lease is not treated as a sale/purchase transaction for income tax purposes according to the guidelines in federal IT-233, leased assets must be considered in computing the NBV/UCC difference adjustment to paid-up capital along with the lessor's other depreciable assets. For this purpose, the net book value of leased assets would be the lessor's net investment in the lease (total lease payments receivable less unearned income).

TOTAL ASSETS FOR INVESTMENT ALLOWANCE PURPOSES

Leasing companies which do not show leased equipment on the balance sheet, have to adjust the "total assets" for capital tax purposes when claiming an investment allowance. The adjustment to be made represents the difference between NBV of leased assets and the sum of lease contracts receivable and residual valuation. This difference is generally equal to the "unearned income" shown on the balance sheet.

Therefore, when calculating total assets for investment allowance purposes for leasing companies that do not show leasing equipment, total assets per balance sheet must be reduced by the amount of the unearned income.

Ontario
Ministry of Revenue
Lorne Maeck
Minister
T.M. Russell
Deputy Minister
Corporations Tax Branch

Interpretation Bulletin

Number L-9 January 22, 1979

SUBJECT: Capital Tax - Inclusions in Paid-up Capital (continued)

GENERAL

In addition to the items described in Bulletin Number L-8, item 6 of the CT23 tax return lists certain other items that must be taken into consideration in computing paid-up capital for capital tax purposes. These are discussed below.

BONDS, DEBENTURES AND MORTGAGES PAYABLE

Amounts owing to either corporations or individuals are included in paid-up capital if these amounts are secured by any property owned by the corporation.

Some of the most common forms of secured liabilities are:

- bonds,
- bond mortgages,
- debentures,
- income bonds,
- income debentures,
- mortgages.

The above debt instruments usually provide for security in the event of default of payment. The security may take any form including a charge against a specific asset of the corporation; e.g. machinery, or a floating charge against all of the assets; e.g. inventories, receivables, fixed assets, investments. Property may include intangibles such as patent rights as well as tangibles such as machinery and equipment.

In certain cases, a corporation may issue the debt instruments listed above without pledging any of its property as security. These unsecured amounts are also included in paid-up capital if they are owing to another corporation (see Loans and Advances in Bulletin Number L-8). Amounts owing to <u>individuals</u> (other than shareholders) are included in paid-up capital only when secured by the corporation's property.

The following amounts may be deducted from paid-up capital if the debt obligation or surplus has not already been reduced by these amounts.

- Unamortized portion of bond discount. The discount is the amount by which the face value of the bond exceeds the issue price. Any portion of the discount which has not already been deducted from surplus may be deducted.

- Premiums on redemption and related expenses. This represents premiums payable by the corporation in excess of the face value of bonds when the bonds are redeemed. If a corporation has added premiums to the face value of bonds on its balance sheet, these premiums should first be deducted before bringing the bonds into paid-up capital.

- Mortgage advances receivable. This represents amounts not yet paid over or credited to the corporation by the mortgagee, if the full amount of the mortgage payable is shown on the balance sheet.

DEFERRED INCOME TAX RESERVES

These reserves represent an appropriation of profits that is not allowed as a deduction from income and is, therefore, included in paid-up capital. If the account is in debit, the amount may be deducted from paid-up capital. By concession, provisions for income taxes payable for the current year are not included in paid-up capital.

CONTINGENT, INVESTMENT, INVENTORY AND SIMILAR RESERVES

These represent appropriations of profits that are not allowed as deductions from income for tax purposes and are, therefore, included in paid-up capital.

SPECIAL RESERVE, IF BOOKED

Deferred profit reserves or reserves for long-term receivables which have been deducted from income under section 20 (1)(n) of the Income Tax Act (Canada) are included in paid-up capital if the amounts are also booked.

OTHER RESERVES

Any reserve which is not allowed as a deduction from income in computing taxable income must be included in paid-up capital. Examples are: contingent, investment and inventory reserves.

Often reserves are claimed by corporations in their books of account that differ in amount from the reserves allowed for income tax purposes. In these cases, paid-up capital must be either increased or decreased by the difference. For example, a corporation may book a depreciation reserve of $1,000,000 whereas capital cost allowance for income tax purposes may amount to only $900,000. The difference of $100,000 must be added to

paid-up capital in determining capital tax payable. The same $100,000 must also be added to total assets in computing investment allowance.

Conversely, where the capital cost allowance exceeds the depreciation booked, the difference is deducted from paid-up capital. For example, capital cost allowance may amount to $1,000,000 whereas only $800,000 has been booked as depreciation. The difference of $200,000 is deducted from paid-up capital, and from total assets in computing investment allowance.

The above adjustments must be made on a cumulative annual basis to reflect the accumulated differences between depreciation booked and capital cost allowance claimed. As a short-cut to determine the accumulated differences, corporations may take the difference between the undepreciated capital cost (U.C.C.) of fixed assets and their net book value (N.B.V.). In so doing, however, extraneous items that may distort a proper comparison must first be removed. For example, land (non-depreciable) and appraisals of fixed assets must be deducted from N.B.V. before comparing the N.B.V. with U.C.C.

Examples of reserves that may require an adjustment to paid-up capital are:

- reserve for depreciation,
- reserve for doubtful debts,
- reserve for goods and services not yet delivered or rendered,
- reserve for rentals paid in advance.

AMOUNTS DEDUCTED IN COMPUTING INCOME TAX THAT DIFFER FROM AMOUNTS BOOKED

A number of other items which are not really reserves are treated similarly to the above reserves for capital tax purposes.

Where the amount deducted from profits or surplus in the financial statements is greater than the amount deducted from income in computing income tax, the difference must be added to paid-up capital. Conversely, where the amount deducted from income in computing income tax is greater than the amount booked, the difference is deducted from paid-up capital.

Examples of these are:

- exploration and development expenses of resource corporations,
- scientific research and development expenses,
- carrying costs of undeveloped land (deducted for Ontario income tax purposes),
- write-off of cumulative eligible capital (goodwill).

If the item is carried as an asset on the balance sheet, total assets used in computing investment allowance must be increased (or decreased) by the same amount that is added to (or deducted from) paid-up capital. For example, scientific research expenditures of $1,000,000 may be treated by a corporation as follows:

(i) $300,000 written off in the profit and loss statement with the balance of $700,000 shown as a deferred asset on the balance sheet,

(ii) $500,000 deducted from income in computing income taxes.

The difference of $200,000 ($500,000 - $300,000) is deducted from paid-up capital. The same $200,000 is also deducted from the $700,000 deferred asset on the balance sheet. This has the effect of reducing total assets by $200,000 in computing investment allowance.

EXCEPTIONS

There are certain exceptions to the Branch's treatment of reserves and other amounts.

- 3% Inventory Allowance

  The allowance is considered to be a special reduction of income tax only. It does not affect the capital of a corporation and should not be deducted from paid-up capital.

- Deferred Profit Reserve

  Deferred profit reserves deducted from income under section 20(1)(n) of the Income Tax Act (Canada) are included in paid-up capital if the amounts are also booked.

Ministry of Revenue
Ontario
Lorne Maeck
Minister
T.M. Russell
Deputy Minister

Corporations Tax Branch

Interpretation Bulletin

Number L-9R August 15, 1980

SUBJECT: Capital Tax - Inclusions in Paid-up Capital (continued)

GENERAL

In addition to the items described in Bulletin Number L-8R, item 6 of the CT23 tax return lists certain other items that must be taken into consideration in computing paid-up capital for capital tax purposes. These are discussed below.

BONDS, DEBENTURES AND MORTGAGES PAYABLE

Amounts owing to either corporations or individuals are included in paid-up capital if these amounts are secured by any property owned by the corporation.

Some of the most common forms of secured liabilities are:

- bonds,
- bond mortgages,
- debentures,
- income bonds,
- income debentures,
- mortgages.

The above debt instruments usually provide for security in the event of default of payment. The security may take any form including a charge against a specific asset of the corporation; e.g. machinery, or a floating charge against all of the assets; e.g. inventories, receivables, fixed assets, investments. Property may include intangibles such as patent rights as well as tangibles such as machinery and equipment.

In certain cases, a corporation may issue the debt instruments listed above without pledging any of its property as security. These unsecured amounts are also included in paid-up capital if they are owing to another corporation (see Loans and Advances in Bulletin Number L-8R). Amounts owing to <u>individuals</u> (other than shareholders) are included in paid-up capital only when secured by the corporation's property.

The following amounts may be deducted from paid-up capital if the debt obligation or surplus has not already been reduced by these amounts.

- Unamortized portion of bond discount. The discount is the amount by which the face value of the bond exceeds the issue price. Any portion of the discount which has not already been deducted from surplus may be deducted.

- Premiums on redemption and related expenses. This represents premiums payable by the corporation in excess of the face value of bonds when the bonds are redeemed. If a corporation has added premiums to the face value of bonds on its balance sheet, these premiums should first be deducted before bringing the bonds into paid-up capital.

- Mortgage advances receivable. This represents amounts not yet paid over or credited to the corporation by the mortgagee, if the full amount of the mortgage payable is shown on the balance sheet.

DEFERRED INCOME TAX RESERVES

These reserves represent an appropriation of profits that is not allowed as a deduction from income and is, therefore, included in paid-up capital. If the account is in debit, the amount may be deducted from paid-up capital. By concession, provisions for income taxes payable for the current year are not included in paid-up capital.

CONTINGENT, INVESTMENT, INVENTORY AND SIMILAR RESERVES

These represent appropriations of profits that are not allowed as deductions from income for tax purposes and are, therefore, included in paid-up capital.

SPECIAL RESERVE, IF BOOKED

The following reserves are included in paid-up capital if the amounts are booked in the accounts even though they have been deducted from income for income tax purposes:

- deferred profit reserves (mortgage reserves) or reserves for long-term receivables - section 20(1)(n) of the Income Tax Act (Canada)

- capital gains reserves - section 40(1)(a)(iii) of the Income Tax Act (Canada)

- resource property reserves - section 18(1) of The Corporations Tax Act

OTHER RESERVES

Any reserve which is not allowed as a deduction from income in computing taxable income must be included in paid-up capital. Examples are: contingent, investment and inventory reserves.

Often reserves are claimed by corporations in their books of account that differ in amount from the reserves allowed for income tax purposes. In these cases, paid-up capital must be either increased or decreased by the difference. For example, a corporation may book a depreciation reserve of $1,000,000 whereas capital cost allowance for income tax purposes may amount to only $900,000. The difference of $100,000 must be added to paid-up capital in determining capital tax payable. The same $100,000 must also be added to total assets in computing investment allowance.

Conversely, where the capital cost allowance exceeds the depreciation booked, the difference is deducted from paid-up capital. For example, capital cost allowance may amount to $1,000,000 whereas only $800,000 has been booked as depreciation. The difference of $200,000 is deducted from paid-up capital, and from total assets in computing investment allowance.

The above adjustments must be made on a cumulative annual basis to reflect the accumulated differences between depreciation booked and capital cost allowance claimed. As a short-cut to determine the accumulated differences, corporations may take the difference between the undepreciated capital cost (UCC) of fixed assets and their net book value (NBV). In so doing, however, extraneous items that may distort a proper comparison must first be removed. For example, land (non-depreciable) and appraisals of fixed assets must be deducted from NBV before comparing the NBV with UCC.

Examples of reserves that may require an adjustment to paid-up capital are:

- reserve for depreciation,
- reserve for doubtful debts,
- reserve for goods and services not yet delivered or rendered,
- reserve for rentals paid in advance.

AMOUNTS DEDUCTED IN COMPUTING INCOME TAX THAT DIFFER FROM AMOUNTS BOOKED

A number of other items which are not really reserves are treated similarly to the above reserves for capital tax purposes.

Where the amount deducted from profits or surplus in the financial statements is greater than the amount deducted from income in computing income tax, the difference must be added to paid-up capital. Conversely, where the amount deducted from income in computing income tax is greater than the amount booked, the difference (not exceeding cost) is deducted from paid-up capital.

Examples of these are:

- exploration and development expenses of resource corporations,

- scientific research and development expenses,

- carrying costs of undeveloped land (deducted for Ontario income tax purposes),

- write-off of cumulative eligible capital (goodwill).

If the item is carried as an asset on the balance sheet, total assets used in computing investment allowance must be increased (or decreased) by the same amount that is added to (or deducted from) paid-up capital. For example, scientific research expenditures of $1,000,000 may be treated by a corporation as follows:

(i) $300,000 written off in the profit and loss statement with the balance of $700,000 shown as a deferred asset on the balance sheet,

(ii) $500,000 deducted from income in computing income taxes.

The difference of $200,000 ($500,000 - $300,000) is deducted from paid-up capital. The same $200,000 is also deducted from the $700,000 deferred asset on the balance sheet. This has the effect of reducing total assets by $200,000 in computing investment allowance.

EXCEPTIONS

There are certain exceptions to the Branch's treatment of reserves and other amounts.

- <u>3% Inventory Allowance</u>

  The allowance is considered to be a special reduction of income tax only. It does not affect the capital of a corporation and should not be deducted from paid-up capital.

- <u>Special Reserve, if Booked</u>

  Deferred profit reserves, capital gains reserves and resource property reserves (discussed on page 2) which are deducted from income for income tax purposes are included in paid-up capital if the amounts are also booked.

- <u>Additional Allowance for Scientific Research</u>

  The additional deduction from income of up to 50% of qualified research expenditures (section 37.1 of the Income Tax Act (Canada)) does not affect the capital of a corporation and should not be deducted from paid-up capital.

- <u>Other</u>

  Any other incentives that may provide a deduction from income in excess of the original cost of expenditures will not affect the capital of a corporation. In any such case, the excess allowance should not be deducted from paid-up capital.

Ontario
Ministry of Revenue
Lorne Maeck
Minister
T.M. Russell
Deputy Minister

Corporations Tax Branch

Interpretation Bulletin

Number L-10 January 22, 1979

SUBJECT: Capital Tax - Goodwill Allowance, Deferred Mining Exploration and Development Expenses, Investment Allowance

GOODWILL ALLOWANCE

GENERAL

A deduction may be claimed from paid-up capital for goodwill or other intangible thing included as an asset if it has no value. Examples of items qualifying as goodwill are:

- certain patents and copyrights,
- franchises,
- costs of incorporating,
- excess of purchase price of assets over their net book value.

The following formula is used to determine whether or not goodwill has value and to determine the amount of goodwill allowance:

GOODWILL ALLOWANCE (to be completed if corporation carries Goodwill as an asset)
Claim the lesser of (A) or (B)

GOODWILL (Exclude any patent or right amortizable by charges to income and eligible capital expenditure)		Excess of Paid-up Capital Stock over Capitalized Value of Net Income for the current year and previous four years	
GOODWILL	....	Paid-up Capital Stock	....
Patent Rights	....	Deduct: Capitalized value of Net Income.	
Copyrights	....	Average Net Income* .. $\times \frac{100}{6}$	
Trademarks	....	(B) Excess of Paid-up Capital Stock	
Other Intangible Assets (specify)			
TOTAL	....		
(A) 50% thereof ..			

*Average net income means the total annual profits less losses for the current year and the immediately preceding four years available for dividends on preferred or common stock after providing for all reasonable charges including income tax, divided by five. Average net income cannot be less than zero. If the capitalized value of net income equals or exceeds the paid-up capital stock, no deduction is allowed.

GOODWILL EXISTING PRIOR TO JANUARY 1, 1972

Goodwill existing prior to January 1, 1972 and carried on a corporation's financial statements since that date may be eligible for this allowance.

ELIGIBLE CAPITAL PROPERTY

Any goodwill arising subsequent to 1971 and qualifying as an eligible capital property for income tax purposes is not entitled to goodwill allowance.

Eligible capital property transferred from one corporation to another under the elective provisions of the Income Tax Act (Canada) does not qualify for the allowance. Since eligible capital property has been transferred at market value it cannot be said to have no value even if the elected amount for income tax purposes is less than F.M.V. or NIL. For example, a corporation acquiring eligible capital property for $100,000 in consideration for the issue of shares may elect a NIL amount for income tax purposes under the rollover provisions of the Act. The goodwill of $100,000, although shown as an asset on the balance sheet, is not eligible for goodwill allowance.

Goodwill appearing on the vendor's balance sheet which had been there prior to 1972 may be eligible for goodwill allowance. However, when such goodwill is transferred to another corporation after 1971, it becomes eligible capital property and no longer qualifies for goodwill allowance.

DEFERRED MINING EXPLORATION AND DEVELOPMENT EXPENSES

Mining corporations accumulate expenses incurred by them in exploration and development activities in Canada. These deferred expenses may be carried forward and deducted from income in computing income taxes in future years. As they are available for future deduction for income tax purposes they may be deducted from paid-up capital for capital tax purposes.

As an example, assume a mining corporation incurred Canadian exploration and development expenses of $1,000,000 which has been treated as follows:

(i) $400,000 written off in the profit and loss statement with the balance of $600,000 shown as deferred expenses (asset) on the balance sheet,

(ii) $200,000 deducted from income in computing income taxes with the balance of $800,000 available to reduce future income taxes.

Paid-up capital would be adjusted as follows:

(a) add \$200,000 - the difference between the write-off for book purposes (\$400,000) and the write-off for tax purposes (\$200,000)

(b) deduct \$800,000 - the balance of the deferred expenses available for future income tax purposes.

The net result of the above is a reduction to paid-up capital of \$600,000. This would be in addition to the \$400,000 already written off in the books and reducing surplus. In effect, paid-up capital has been reduced by \$1,000,000, the full amount of the exploration and development expenses.

EXCEPTION - GAS AND OIL

No additional deduction is allowed for deferred expenses incurred in exploring and developing oil sands or oil shale deposits and in exploring and drilling for oil or gas.

INVESTMENT ALLOWANCE

GENERAL

In computing taxable paid-up capital, corporations may claim an investment allowance as a deduction from paid-up capital. This deduction is granted to minimize double-taxation that might result by including the qualified investments in the paid-up capital of the issuing corporations.

Corporations may compute an investment allowance using the following formula:

$$\frac{\text{Cost of Eligible Investments}}{\text{Total Assets (as adjusted)}} \times \text{Paid-up Capital (as adjusted)}$$

In no case can the investment allowance exceed the cost of eligible investments used in the numerator of the above fraction.

<u>Cost of Eligible Investments</u>

Investments qualifying for this deduction are:

- term deposits with Canadian banks and investment certificates of Canadian trust companies,
- bonds and other securities of governments, municipalities and school districts,
- bonds and debentures of other corporations,
- mortgages due from other corporations,
- shares in other corporations (at greater of book value or cost),

- loans and advances to corporations (except amounts due from parent corporation with head office outside Canada).

Cost is used in all cases except for shares in other corporations for which the greater of book value or cost may be used. Amounts shown on the balance sheet as lease receivables do not qualify for investment allowance.

Total Assets (as adjusted)

Total assets used in the denominator of the fraction are those on the balance sheet, adjusted if necessary as follows:

Total assets must be increased by:

- any amount by which an asset is carried in the books of account or on the balance sheet in excess of cost. An example would be shares in a subsidiary company which are shown at equity value instead of original cost.

- any amount by which the value of an asset has been written down and deducted from income or surplus where such amount is not deductible from income for income tax purposes. An example would be an investment in marketable securities written down to market values.

Total assets must be reduced by:

- goodwill allowance,

- discount on the issue of share capital,

- deferred mining exploration and development expenses deductible from income under section 20,

- any amount by which the value of an asset has been written down and deducted from income or surplus where such amount is deductible from income for tax purposes (except a deferred profit reserve deducted from income under section 20(1)(n) of the Income Tax Act (Canada) if the amount is also booked).

Paid-up Capital (as adjusted)

Paid-up Capital must be reduced by the following before being used in the formula for the investment allowance computation:

- goodwill allowance,

- discount on issue of share capital,

- deferred mining exploration and development expenses deductible from income under section 20.

Ontario
Ministry of Revenue
Lorne Maeck, Minister
T.M. Russell, Deputy Minister

Corporations Tax Branch

Interpretation Bulletin

Number L-10R August 15, 1980

SUBJECT: Capital Tax - Goodwill Allowance, Deferred Mining Exploration and Development Expenses, Investment Allowance

GOODWILL ALLOWANCE

GENERAL

A deduction may be claimed from paid-up capital for goodwill or other intangible thing included as an asset if it has no value. Examples of items qualifying as goodwill are:

- certain patents and copyrights,
- franchises,
- costs of incorporating,
- excess of purchase price of assets over their net book value.

The following formula is used to determine whether or not goodwill has value and to determine the amount of goodwill allowance:

GOODWILL ALLOWANCE (to be completed if corporation carries Goodwill as an asset)

Claim the lesser of (A) or (B)

GOODWILL (Exclude any patent or right amortizable by charges to income and eligible capital expenditure)		Excess of Paid-up Capital Stock over Capitalized Value of Net Income for the current year and previous four years	
GOODWILL	....	Paid-up Capital Stock	....
Patent Rights	....	Deduct: Capitalized value of Net Income	
Copyrights	....		
Trademarks	....	Average Net Income* .. $\times \frac{100}{6}$	
Other Intangible Assets (specify)		(B) Excess of Paid-up Capital Stock	
TOTAL	....		
(A) 50% thereof .			

*Average net income means the total annual profits less losses for the current year and the immediately preceding four years available for dividends on preferred or common stock after providing for all reasonable charges including income tax, divided by five. Average net income cannot be less than zero. If the capitalized value of net income equals or exceeds the paid-up capital stock, no deduction is allowed.

GOODWILL EXISTING PRIOR TO JANUARY 1, 1972

Goodwill existing prior to January 1, 1972 and carried on a corporation's financial statements since that date may be eligible for this allowance.

ELIGIBLE CAPITAL PROPERTY

Any goodwill arising subsequent to 1971 and qualifying as an eligible capital property for income tax purposes is not entitled to goodwill allowance.

Eligible capital property transferred from one corporation to another under the elective provisions of the Income Tax Act (Canada) does not qualify for the allowance. Since eligible capital property has been transferred at market value it cannot be said to have no value even if the elected amount for income tax purposes is less than F.M.V. or NIL. For example, a corporation acquiring eligible capital property for $100,000 in consideration for the issue of shares may elect a NIL amount for income tax purposes under the rollover provisions of the Act. The goodwill of $100,000, although shown as an asset on the balance sheet, is not eligible for goodwill allowance.

Goodwill appearing on the vendor's balance sheet which had been there prior to 1972 may be eligible for goodwill allowance. However, when such goodwill is transferred to another corporation after 1971, it becomes eligible capital property and no longer qualifies for goodwill allowance.

DEFERRED MINING EXPLORATION AND DEVELOPMENT EXPENSES

Mining corporations accumulate expenses incurred by them in exploration and development activities in Canada. These deferred expenses may be carried forward and deducted from income in computing income taxes in future years. As they are available for future deduction for income tax purposes they may be deducted from paid-up capital for capital tax purposes.

As an example, assume a mining corporation incurred Canadian exploration and development expenses of $1,000,000 which has been treated as follows:

(i) $400,000 written off in the profit and loss statement with the balance of $600,000 shown as deferred expenses (asset) on the balance sheet,

(ii) $200,000 deducted from income in computing income taxes with the balance of $800,000 available to reduce future income taxes.

Paid-up capital would be adjusted as follows:

(a) add $200,000 - the difference between the write-off for book purposes ($400,000) and the write-off for tax purposes ($200,000)

(b) deduct $800,000 - the balance of the deferred expenses available for future income tax purposes.

The net result of the above is a reduction to paid-up capital of $600,000. This would be in addition to the $400,000 already written off in the books and reducing surplus. In effect, paid-up capital has been reduced by $1,000,000, the full amount of the exploration and development expenses.

EXCEPTION - GAS AND OIL

No additional deduction is allowed for deferred expenses incurred in exploring and developing oil sands or oil shale deposits and in exploring and drilling for oil or gas.

INVESTMENT ALLOWANCE

GENERAL

In computing taxable paid-up capital, corporations may claim an investment allowance as a deduction from paid-up capital. This deduction is granted to minimize double-taxation that might result by including the qualified investments in the paid-up capital of the issuing corporations.

Corporations may compute an investment allowance using the following formula:

$$\frac{\text{Cost of Eligible Investments}}{\text{Total Assets (as adjusted)}} \times \text{Paid-up Capital (as adjusted)}$$

In no case can the investment allowance exceed the cost of eligible investments used in the numerator of the above fraction.

<u>Cost of Eligible Investments</u>

Investments qualifying for this deduction are:

- term deposits with Canadian banks and investment certificates of Canadian trust companies for a term of and held by the corporation for at least 120 days, effective for taxation years ending after April 22, 1980,
- bonds and other securities of governments, municipalities and school districts, whether secured or unsecured,
- bonds and debentures of other corporations,
- mortgages due from other corporations,
- shares in other corporations (at greater of book value or cost),
- loans and advances to other corporations (see exception below),
- amounts due from related corporations with head offices outside Canada have previously been deemed not to be loans and advances

to other corporations for investment allowance purposes. For taxation years ending after April 22, 1980 such amounts will qualify as investments provided that they have been outstanding for at least 120 days prior to the year end of the lending corporation.

Cost is used in all cases except for shares in other corporations for which the greater of book value or cost may be used. Amounts shown on the balance sheet as lease receivables do not qualify for investment allowance.

Total Assets (as adjusted)

Total assets used in the denominator of the fraction are those on the balance sheet, adjusted if necessary to include the following:

- any amount by which an asset is carried in the books of account or on the balance sheet in excess of cost. An example would be shares in a subsidiary company which are shown at equity value instead of original cost.

- any amount by which the value of an asset has been written down and deducted from income or surplus where such amount is not deductible from income for income tax purposes. An example would be an investment in marketable securities written down to market values.

Total assets must be reduced by:

- goodwill allowance,

- discount on the issue of share capital,

- deferred mining exploration and development expenses deductible from income under section 20,

- any amount by which the value of an asset has been written down and deducted from income or surplus where such amount is deductible from income for tax purposes except the following reserves, if booked,

  - deferred profit reserve - section 20(1)(n) of the Income Tax Act (Canada)

  - capital gains reserve - section 40(1)(a)(iii) of the Income Tax Act (Canada)

  - resource property reserve - section 18(1) of The Corporations Tax Act

Paid-up Capital (as adjusted)

Paid-up Capital must be reduced by the following before being used in the formula for the investment allowance computation:

- goodwill allowance,

- discount on issue of share capital,

- deferred mining exploration and development expenses deductible from income under section 20.

Ontario
Ministry of Revenue
Lorne Maeck
Minister
T.M. Russell
Deputy Minister
Corporations Tax Branch

Interpretation Bulletin

Number L-11   January 22, 1979

SUBJECT: Capital Tax - Numerical Example

PURPOSE

This bulletin provides a numerical example to illustrate the method of calculating Paid-up Capital, Taxable Capital and Capital Tax outlined in Bulletins Number L-7 to L-10 for a hypothetical "ordinary" Ontario corporation with share capital.

Numerical examples of these calculations for the "special cases" dealt with in Bulletin Number L-7 (such as non-resident Corporations, banks and loan and trust companies) will be provided on written request and may be reproduced in future bulletins if there is sufficient demand.

INTRODUCTION

In this example, Typical Corporation, an Ontario manufacturing corporation with no permanent establishments outside the Province, is filing its CT23 Corporations Tax Return for its taxation year ended June 30, 1978.

Typical Corporation has a 1/3 interest in a partnership called Unincorporated Joint Venture which has an April 30th year end for accounting purposes.

In its previous taxation year, Typical Corporation received a government grant which had to be deducted in determining capital cost for C.C.A. purposes. U.C.C. at the year end is NIL.

Goodwill was purchased in the year for $100,000 and the full 10% deduction re cumulative eligible capital was claimed for income tax purposes.

Prepaid expenses and the 3% inventory allowance were also claimed for income tax purposes.

TYPICAL CORPORATION
(Unconsolidated)
As at June 30, 1978

Assets

Current assets:		
Cash	$ 20,000	
Canadian bank term deposits	100,000	
Accounts receivable	250,000	
Inventories	500,000	
Prepaid expenses	30,000	
		$ 900,000
Fixed assets:		
Manufacturing equipment	500,000	
Less: Government grant	(200,000)	
Accumulated depreciation	(100,000)	
		200,000
Investments:		
Subsidiary corporation (on equity basis, cost $1,000,000)	800,000	
Advances to Unincorporated Joint Venture	150,000	
		950,000
Other assets:		
Discount and cost of debenture issue	50,000	
Goodwill (purchased in the year, at cost)	100,000	
		150,000
		$2,200,000

Liabilities and Shareholders' Equity

Current liabilities:		
Bank indebtedness:		
- overdraft (outstanding cheques)	$ 20,000	
- loan	50,000	
Accounts payable:		
- to subsidiary ($85,000 over 120 days)	150,000	
- to others	150,000	
Allowance for warranties	200,000	
Income taxes payable	30,000	
Current portion of long-term debt	100,000	
		$ 700,000
Long-term debt:		
Note payable to parent	200,000	
Debentures payable	1,000,000	
	1,200,000	
Less: Current portion	100,000	
		1,100,000
Deferred income taxes		100,000
Shareholders' equity:		
Common shares	200,000	
Retained earnings	100,000	
		300,000
		$2,200,000

UNINCORPORATED JOINT VENTURE
As at April 30, 1978
(Balance Sheet Date Closest to June 30, 1978)

Assets			Liabilities		
Cash (Includes $30,000 Canadian bank term deposit)	$ 50,000		Mortgage payable		$ 750,000
Land	1,900,000		Partners' advances:		
			Typical Corporation	$300,000	
			Other Partner	900,000	
					1,200,000
	$1,950,000				$1,950,000

CALCULATION OF PAID-UP CAPITAL - TYPICAL CORPORATION
(Bulletins Number L-8 and L-9, sections 126(1) and 127(2) of the Act)

			CT23 Item
Shareholders' Equity:			
Common shares		$ 200,000...	6A.
Retained earnings		100,000...	6B.
Government grant		200,000...	6C.
Liabilities:			
Note payable to parent	$ 200,000		
Accounts payable to subsidiary over 120 days old	85,000		
		285,000...	6D. & E.
Bank loan		50,000...	6F.
Debentures payable		1,000,000...	6G.
Mortgage payable in Unincorporated Joint Venture $750,000 x 1/3 interest		250,000...	6H.
Reserves:			
Deferred income tax reserve		100,000...	6J.
Warranty reserve	200,000		
Investment reserve	200,000		
		400,000...	6K.
		$2,585,000	
Adjustments to Surplus:			
Depreciation reserve:			
U.C.C.	NIL		
N.B.V.	200,000		
	(200,000)		
Unamortized discount	(50,000)		
Prepaid expenses deducted for income tax purposes	(30,000)		
Amortized cumulative eligible capital	(5,000)		
		(285,000)..	6N.
		$2,300,000...	6O.

CALCULATION OF ELIGIBLE INVESTMENTS
(Bulletin Number L-10, sections 127(1)(c) and 127(2) of the Act.)

			CT23 Item
Term Deposits:			
- in Typical Corporation	$100,000		
- in Unincorporated Joint Venture $30,000 x 1/3	10,000		
		$ 110,000...	7A.
Investment in Subsidiary Corporation at cost		1,000,000...	7E.
		$1,110,000...	7G.

CALCULATION OF TOTAL ASSETS
FOR INVESTMENT ALLOWANCE PURPOSES (Bulletin Number L-10 section 127(2) of the Act)

Total assets per balance sheet		$2,200,000...	8A.
Deductions from assets not allowed:			
- Government grant	$200,000		
- Investment reserve	200,000	400,000...	8B.
Deductions from assets allowed:			
- Prepaid expenses	$ 30,000		
- Discount	50,000		
- Goodwill	5,000		
- N.B.V./U.C.C.	200,000	(285,000)..	8D.
Partnership adjustments:			
- Interest in assets $1,950,000 x 1/3	$650,000		
- Less: Investment per balance sheet	(150,000)	500,000...	8E.
		$2,815,000...	8F.

CALCULATION OF TAXABLE CAPITAL
(Bulletin Number L-10, section 127(1)(c) and 127(2) of the Act)

Paid-up capital (Page 3)		$2,300,000...	6O.
Less: Investment Allowance:			
$\frac{\text{Investments (Above) \$1,110,000}}{\text{Total assets (Above) \$2,815,000}}$	X $2,300,000	906,928...	9A., 6R.
		$1,393,072...	6S., 3A.

CALCULATION OF CAPITAL TAX
(Bulletin Number L-7, section 131(1) of the Act)

3/10 of 1% of $1,393,072 at 100% Ontario allocation	$4,179...	3F.

CT23 RETURN

Pages 1 and 2 of Typical Corporation's CT23 Return for its June 30, 1978 taxation year are attached.

Ministry of Revenue — Corporations Tax Branch — Queen's Park, Toronto, Ontario M7A 1Y1

Ontario

Corporations Tax Return — CT23

Pursuant to The Corporations Tax Act, 1972

This return is to be filed within six months of the fiscal year end by all corporations except:
(1) exempt corporations (see page 4 Instructions)
(2) Insurance corporations

SEE INSTRUCTIONS FOR COMPLETION ON PAGE 4

1. Identification — Affix the Return Identifier in this space

Name and Address

TYPICAL CORPORATION
77 BLOOR STREET WEST
TORONTO, ONTARIO
M7A 1Y1

Account No.	Code
0000000	11

Fiscal Year End Year	Month	Day	Date Incorporated Year	Month	Day
78	06	30	72	01	01

Jurisdiction Incorporated: ONTARIO

Mailing Address (if different from label address shown)	Postal Code	Telephone Number
		(416)965-4040

Address of chief business office in Ontario (if different from above)	Postal Code	Telephone Number
		( )

Nature of business (state whether the company mines, manufactures, constructs, trades (wholesale or retail), renders services, etc.): MANUFACTURING AND DISTRIBUTION OF WIDGETS

City and jurisdiction of head office: TORONTO, ONTARIO

Corporation's Federal Account Number: 0 0 0 0 0 0 0 0

Ontario Retail Sales Tax Vendor Permit Number (if more than one R.S.T. number, quote that used by Head Office): 0 0 0 0 0 0 0 0

Type of Corporation
1. ☒ Canadian-controlled Private throughout the year
2. ☐ Other Private
3. ☐ Public
4. ☐ Non-share Capital
5. ☐ Other (Specify) ____

Has the Corporation previously filed a return (CT23)? ☒ Yes ☐ No

Is this an amended Return? 1 ☐ Yes 0 ☒ No

Gross Revenue (to nearest dollar): 3,000,000.00

Has the corporation made a deduction in this taxation period for an investment in a Registered Venture Investment Corp? 1 ☐ Yes 0 ☒ No

Share capital with full voting rights owned by Canadian residents (nearest percent): 100 %

2. Income Tax

Prorations (i) and (ii) are required when Taxation Year straddles March 7, 1978

Number of days in Taxation Year:

Taxable Income A NIL .00 × Ontario Allocation (Item 12H) B ____ % ×
- (i) 12% × Days before March 8, 1978 C ____ ÷ Total Days D ____ = E ____ .00
- (ii) 13% × Days after March 7, 1978 F ____ ÷ Total Days G ____ = H ____ .00

\+ = I ____ .00

OR

Non-Capital Loss To Be Carried Back K ____ .00

Less: Small Business Tax Credit (Item 10) J ____ .00 + Ontario Foreign Tax Credit L ____ .00 = M ____ .00 = Income Tax N NIL .00

Enter "Nil" in N

3. Capital Tax

Corporation registered under the Ontario Loan and Trust Corporations Act, see Page 4, Instruction (e)

Taxable Capital A 1,393,072.00 × Ontario Allocation (% in 2B) B 100 % = Taxable Capital Used in Ontario C 1,393,072.00

Amount in 3C
- (i) If over $100,000 tax is — D 1,393,072.00 × 0.3%
- (ii) If over $50,000 and not over $100,000, tax is — $100.00
- (iii) If $50,000 or less, tax is $50.00

× Number of days in Taxation Year E 365 ÷ 365 = Capital Tax F 4,179.00 (Minimum $50)

4. Tax Payable

Payment by Cheque or Money Order in Canadian Funds Payable to the Treasurer of Ontario

TOTAL TAX PAYABLE (2N + 3F) A 4,179.00

LESS - Payments B 4,179.00

Difference C NIL .00

Balance of Tax Payable enclosed herewith		Overpayment	Refund	Apply to Subsequent Year
D $ .00	OR	E $ .00	☐	☐

5. Certification

Name (in Block Letters): JOHN TYPICAL

Rank of Officer: PRESIDENT

Full Residence Address: 77 BLOOR STREET WEST, TORONTO, ONTARIO, M7A 1Y1

I am an authorized signing officer of the Corporation.
I certify that this return, including accompanying schedules and statements, has been examined by me, is a true, correct and complete return, and that the information is in agreement with the books of the company.
I further certify that the method of computing income for this taxation year is consistent with that of the previous taxation year except as specifically disclosed in a statement attached to this return.

Date: December 31, 1978

Signature of a signing officer of the Corporation: J. Typical

FOR BRANCH USE ONLY

1 2 3 4 5 6 7 8 9 10 11 DRS SCR

SEQ. #96-100

Form (1) 04/78 02500J

Ontario
Ministry of Revenue
Lorne Maeck
Minister
T.M. Russell
Deputy Minister

Corporations Tax Branch

Interpretation Bulletin

Number L-12 October 15, 1979

Les bulletins sont disponibles en français sur demande à la Direction de l'impôt sur les corporations, Ministère du Revenu, Queen's Park, Toronto, Ontario M7A 1Y1 Téléphone: 965-1160

SUBJECT: Capital Tax - Corporate Partners in Limited and Ordinary Partnerships

INTRODUCTION

This Bulletin describes the capital tax treatment of a corporate partner's interest in an unincorporated joint venture or partnership.

ORDINARY PARTNERSHIPS

As described on page 3 of Interpretation Bulletin L-7, a corporation investing in an unincorporated joint venture or partnership must reflect the accounts of that partnership in its capital tax computations. Each corporate partner includes in the computation of paid-up capital, its share of the liabilities of the partnership or joint venture that would otherwise be included in the paid-up capital of a corporation.

Section 126(4) of the Act which was introduced by the April 10, 1979 Ontario Budget provides legislation to codify this treatment for all partnerships. The only change for general partnerships is the use of the profit-sharing ratio in determining the portion of the paid-up capital to be included for each corporate partner instead of the capital distribution ratio mentioned in Bulletin L-7.

LIMITED PARTNERSHIPS

Pages 2 and 3 of Information Bulletin 15-79, announce that section 126(4) of the Act, which was enacted by Bill 59, 1979, provides for similar rules to be applied to taxpayers investing in limited partnerships. Each corporate general and limited partner must now include in computing paid-up capital, its share of those limited partnership liabilities and other amounts that would be components of the paid-up capital of a corporation. Partners' shares are to be determined by reference to the profit-sharing ratios of the limited partnership except for a general partner. A general partner shall report, in addition to its own share, the shares of non-corporate limited partners of the limited partnership who are;

- shareholders of the general partner
- members of such shareholders' family

- related to the general partner
- trusts, the beneficiaries of which are related to any of the above persons.

Previously, the liabilities of a limited partnership were attributed completely to its general partners.

In a partnership that has more than one corporate general partner it may happen that there is a non-corporate limited partner who is related to two general partners. Those two general partners must include in their calculation of paid-up capital their proportionate share of that limited partner's liabilities. The proportions used derive from the profit-sharing ratios of the general partners in the limited partnership. In the example below Partner A with 40% has an interest twice that of Partner B at 20%. They therefore divide the share of limited Partner C in two parts to A and one part to B.

[illegible]

Section 1(1)(a) of the Act ties the Province in to the definition of the term "relationship" provided in subsection 251 (2) of the Income Tax Act (Canada).

Under that definition, an individual limited partner who is, for example, the controlling shareholder of the parent company of a corporate general partner, is related to that general partner.

PROFIT-SHARING RATIO

The paid-up capital of the partnership (determined as if it were a corporation) is allocated to each partner in the same proportion as the share of the profits to which the partner is entitled under the partnership agreement. Accordingly, the paid-up capital of the partnership must be allocated to the partners even if the partnership makes no profit or suffers a loss in the year.

EFFECTIVE DATE

These new rules are effective for taxation years ending after April 10, 1979.

PARTNERSHIP'S FINANCIAL STATEMENTS

The proportionate share of the liabilities of the partnership to be included are drawn from the partnership's balance sheet at the date <u>closest</u> to the fiscal year end of the corporate partner.

INVESTMENT ALLOWANCE

The Act does not permit a corporate partner to claim an investment allowance on that partner's share of eligible investments of the partnership. The partners of a partnership each have

an interest in the partnership itself but not in any specific assets of the partnership. This is especially true for limited partners of limited partnerships where the general partner has exclusive control of all the partnership assets until such time as the partnership is dissolved.

However, as a concession, the Branch allows a corporate partner (general partner or limited partner) to claim an investment allowance on his share of any qualifying investments of the partnership. This share is the same proportion as the partner's share of the partnership paid-up capital.

For this purpose, the corporate partner's share of the partnership's "total assets" (based on the profit-sharing ratio) should be added to the partner's own "total assets" and a deduction made from "total assets" for the amount of 'investment in the partnership' shown on the corporate partner's balance sheet. This adjustment must also be made when a corporate partner claims investment allowance on his <u>own</u> corporate investments.

NUMERICAL EXAMPLE

Limited Partnership
Balance Sheet
<u>As at April 30, 1979</u>

Land	$1,000,000	Mortgage Payable	$ 400,000
		Partners Accounts and Profit-Sharing Ratios:	
		• Corporate general partner A - 40%	150,000
		• Corporate general partner B - 20%	150,000
		• Individual limited partner C (Shareholder of A and B) - 30%	200,000
		• Non-related individual limited partner D - 5%	75,000
		• Corporate limited partner E (Subsidiary of A) - 5%	25,000
	$1,000,000		$1,000,000

Under the new rules A will include in its paid-up capital, in addition to its own 40% of the mortgage payable, 40/60 of C's 30% share, for a total of 60% or $240,000. Similarly, B will include the remaining 20/60 of C's 30% share plus its own 20%, for a total of 30% or $120,000. E will include only its 5% share or $20,000 in paid-up capital and D's 5% share representing $20,000 will not be taxed.

NUMERICAL EXAMPLE OF "TOTAL ASSETS" ADJUSTMENT WHEN CLAIMING AN INVESTMENT ALLOWANCE ON PARTNERSHIP INVESTMENTS AND/OR OWN CORPORATE INVESTMENTS

A Ltd.
Balance Sheet
As at April 30, 1979

Investment in government bonds	$ 10,000	Accounts payable	$ 40,000
Investment in AB Partnership	50,000	Capital stock	60,000
Other assets	40,000		
	$100,000		$100,000

AB Partnership
Balance Sheet
As at April 30, 1979

Accounts receivable	$ 40,000	Accounts payable	$100,000
Other assets	160,000	Capital Accounts	
		A Ltd. - 50%	50,000
		B Ltd. - 50%	50,000
	$200,000		$200,000

Total assets per A Ltd.'s balance sheet	$100,000
Add: Share of total assets of AB Partnership 50% of $200,000	100,000
	$200,000
Deduct: Investment in AB Partnership per A Ltd.'s balance sheet	50,000
"Total Assets" to be used by A Ltd. in computing A Ltd.'s investment allowance	$150,000

Ministry of Revenue
Ontario
Lorne Maeck
Minister
T.M. Russell
Deputy Minister

Corporations Tax Branch

Interpretation Bulletin

Number L-13 October 15, 1979

SUBJECT: Summary of Ontario Corporations Tax for Non-Residents

INTRODUCTION

This material is intended to provide a brief overview of the provisions of the Act affecting non-resident corporations that do business in Ontario or derive income from a source in the Province.

LIABILITY FOR TAX - (SECTIONS 2(2) and (3))

A non-resident corporation is liable for Ontario corporate income tax if, at any time in the taxation year or the previous taxation year, it or an unincorporated partnership or joint venture in which it has a partnership interest:

(a) had an Ontario permanent establishment;

(b) owned and received income from an Ontario:

  (i) real property,
  (ii) timber resource property, or
  (iii) timber limit;

(c) disposed of taxable Canadian property (as defined in the Income Tax Act, Canada) that was situated in Ontario; or

(d) carried on business in Ontario.

Non-resident corporations that are liable for Ontario income tax solely by virtue of criteria (c) are not liable for Ontario capital tax. In all other cases, they are liable for capital tax as well as Ontario income tax.

EFFECT OF TREATY

For a company incorporated in a jurisdiction (such as the U.S.A.) that has entered into a Tax Treaty or Convention with Canada, criterion (b) applies only if the non-resident has elected to pay tax under Part I rather than Part XIII of the federal Act.

In addition, factor (c) does not apply if that Treaty determines that dispositions of taxable Canadian property are not taxed for federal purposes. The Canada-U.S. Convention is one, for example, that determines they are not taxed.

PERMANENT ESTABLISHMENT - (SECTION 7)

The definition of this term is basically the same for purposes of determining the liability for tax of both non-resident and Canadian corporations. A non-resident that produced, grew, mined, created, manufactured, fabricated, improved, packed, preserved or constructed anything in Canada in whole or in part, is deemed to have maintained a Canadian permanent establishment for Ontario purposes.

Incorporated non-resident entertainers and producers are also deemed to have a Canadian permanent establishment if they produce or present any form of live public entertainment in Canada.

CARRIED ON BUSINESS

Page 3 of Information Bulletin 7-78, stated that effective for taxation years ending after December 7, 1977, non-resident corporations that carry on business in Ontario are subject to tax even if they do not maintain a permanent establishment in the Province. Ontario is tied-in to the extended meaning of carrying on business given in section 253 of the Income Tax Act (Canada). Accordingly, a non-resident corporation that solicited orders or offered anything for sale in Ontario through an agent or servant is subject to tax in the Province.

INCOME TAX

Whereas Canadian corporations are liable for tax on their world income, non-residents are taxed on their taxable income earned in Canada only. The 2-factor allocation formula based on salaries/wages and gross revenue is provided to avoid taxing income attributable to other Canadian provinces and territories.

The current rate of income tax is 14%. This was announced in Information Bulletin 14-79. While non-residents may qualify for the 1% Ontario manufacturing and processing credit, they cannot claim the 4% small business incentive which is available only to Canadian-controlled private corporations.

CAPITAL TAX

Page 3 of Interpretation Bulletin L-7, mentions that the capital tax calculation for non-resident corporations is based on taxable paid-up capital employed in Canada, rather than the world taxable paid-up capital base used for Canadian corporations. Paid-up capital employed in Canada for a non-resident corporation with business outside Canada is the greater of:

> its taxable income earned in Canada capitalized at 8% and,
>
> its paid-up capital employed in Canada calculated as if the corporation had no permanent establishment outside of Canada.

The 8% capitalization does not apply to non-resident corporations whose business is carried on entirely in Canada. (see Information Bulletin L-7 dated January 22, 1979 for details as to the computation of "paid-up capital employed in Canada".)

Taxable paid-up capital employed in Canada is the amount derived from this formula less the deductions for investment allowance, goodwill allowance and deferred Canadian exploration and development expenses described in Interpretation Bulletin L-10.

Each non-resident corporation which has interests in unincorporated Canadian partnerships must include in its paid-up capital employed in Canada its share of those partnership liabilities that would be included in the paid-up capital of a corporation, based on its profit-sharing ratio. Similarly, the non-resident corporation's share of the partnership's investments is available for investment allowance purposes.

The rate of capital tax for non-resident corporations is the same 3/10 of 1% that applies to ordinary Canadian corporations and the same 2-factor allocation formula provided for income tax purposes is used to reduce taxes in respect of taxable paid-up capital used in other Canadian provinces or territories.

The reduced capital tax for small businesses with taxable paid-up capital (employed in Canada) less than $300,000 and "loss corporations" with taxable paid-up capital (employed in Canada) less than $1 million, announced in Information Bulletin 14-79 also apply to non-resident corporations.

NUMERICAL CAPITAL TAX EXAMPLE

NON-RESIDENT CORPORATION
CANADIAN BRANCH (A WHOLLY ONTARIO OPERATION)
as at August 31, 1979

Canadian bank term deposit	$100,000	Accounts payable	$200,000
Inventory	400,000	Home Office Account (including $80,000 profit for the year)	600,000
Building (at U.C.C.)	300,000		
	$800,000		$800,000

Paid-up capital employed in Canada:

The greater of:

(a) Taxable income earned in Canada capitalized at 8% is $80,000/8% equals $1 million; and

(b) Paid-up capital employed in Canada otherwise calculated, that is, $600,000.

Taxable paid-up capital employed in Canada:

Paid-up capital employed in Canada, calculated above	$1,000,000
Less: Investment allowance:	
$\frac{\$100,000}{\$800,000} \times \$1,000,000 = \$125,000$	
Maximum claim is the cost of the investments	(100,000)
	$ 900,000

Capital tax:

At 3/10 of 1% with no allocation to other provinces or territories	$2,700

Ministry of Revenue
Ontario
Lorne Maeck
Minister
T.M. Russell
Deputy Minister
Corporations Tax Branch

Interpretation Bulletin

Number L-13R August 15, 1980

Les bulletins sont disponibles en français sur demande à la Direction de l'impôt sur les corporations,
Ministère du Revenu, Queen's Park, Toronto, Ontario M7A 1Y1 Téléphone: 965-1160

SUBJECT: Summary of Ontario Corporations Tax for Non-Residents

INTRODUCTION

Bulletin L-13 was published on October 15, 1979. Changes have become necessary as a result of the Ontario Budget of April 22, 1980, and this Bulletin has therefore been revised as L-13R which replaces L-13. It provides a brief overview of the provisions of the Ontario Corporations Tax Act affecting non-resident corporations that derive income from a source in the Province.

A major change from Bulletin L-13 is the removal of any reference to "carrying on business in Ontario". The provision in Bill 88 of 1977 which introduced this measure for taxation years ending after December 7, 1977 has now been repealed. The effective date of repeal is the same as the date the measure commenced, so no corporations are subject to tax under this provision.

LIABILITY FOR TAX - SECTIONS 2(2) and (3)

A non-resident corporation is liable for Ontario corporate income tax if, at any time in the taxation year or the previous taxation year, it or an unincorporated partnership or joint venture in which it has a partnership interest:

(a) had an Ontario permanent establishment;

(b) owned and received income from the sale or rental (including royalties) of an Ontario:

  (i) real property,
  (ii) timber resource property, or
  (iii) timber limit;

(c) disposed of taxable Canadian property (as defined in the Income Tax Act (Canada)) that was situated in Ontario.

Non-resident corporations that are liable for Ontario income tax solely by virtue of criterion (c) are not liable for Ontario capital tax. In all other cases, they are liable for capital tax as well as Ontario income tax.

EFFECT OF TREATY

For a company incorporated in a jursidiction (such as the U.S.A.) that has entered into a Tax Treaty or Convention with Canada,

criterion (b) applies only if the non-resident has elected to pay tax under Part I rather than Part XIII of the federal Act.

In addition, factor (c) does not apply if that Treaty determines that dispositions of taxable Canadian property are not taxed for federal purposes. The Canada-U.S. Convention is one, for example, that determines they are not taxed.

PERMANENT ESTABLISHMENT - SECTION 7

The definition of this term is basically the same for purposes of determining the liability for tax of both non-resident and Canadian corporations. A non-resident that produced, grew, mined, created, manufactured, fabricated, improved, packed, preserved or constructed anything in Canada in whole or in part, is deemed to have maintained a Canadian permanent establishment for Ontario purposes.

Incorporated non-resident entertainers and producers are also deemed to have a Canadian permanent establishment if they produce or present any form of live public entertainment in Canada. Further information regarding the collection of tax payable by non-resident entertainers is contained in a Bulletin issued by the Branch on October 15, 1979.

INCOME TAX

Whereas Canadian corporations are liable for tax on their world income, non-residents are taxed on their taxable income earned in Canada only. The 2-factor allocation formula based on salaries, wages and gross revenue is provided to avoid taxing income attributable to other Canadian provinces and territories.

The current rate of income tax is 14%. This was announced in Information Bulletin 14-79. While non-residents may qualify for the 1% Ontario manufacturing and processing credit, they cannot claim the 4% small business incentive which is available only to Canadian-controlled private corporations.

However, non-residents are eligible for the tax credits available under the Small Business Development Corporation program and the Ontario Mineral Exploration program.

CAPITAL TAX

- Special Rules

Page 4 of Interpretation Bulletin L-7R, mentions that the capital tax calculation for non-resident corporations is based on taxable paid-up capital employed in Canada, rather than the world taxable paid-up capital base used for Canadian corporations. Paid-up capital employed in Canada for a non-resident corporation with business outside Canada is the greater of:

its taxable income earned in Canada capitalized at 8% and,

its paid-up capital employed in Canada calculated as if

the corporation has no permanent establishment outside of Canada.

The 8% capitalization does not apply to non-resident corporations whose business is carried on entirely in Canada. (See Information Bulletin L-7R for details as to the computation of "paid-up capital employed in Canada".)

Taxable paid-up capital employed in Canada is the amount derived from this formula less the deductions for investment allowance, goodwill allowance and deferred Canadian exploration and development expenses described in Interpretation Bulletin L-10R.

Each non-resident corporation which has interests in unincorporated Canadian partnerships must include in its paid-up capital employed in Canada its share of those partnership liabilities that would be included in the paid-up capital of a corporation, based on its profit-sharing ratio. Similarly, the non-resident corporation's share of the partnership's investments is available for investment allowance purposes.

The rate of capital tax for non-resident corporations is the same 3/10 of 1% that applies to ordinary Canadian corporations and the same 2-factor allocation formula provided for income tax purposes is used to reduce taxes in respect of taxable paid-up capital used in other Canadian provinces or territories.

- Reduced Capital Tax

Effective for taxation years ending after April 22, 1980, non-resident corporations may qualify for the flat $50 or $100 capital tax (or a reduced tax based on the notch provision) which is payable by resident corporations under section 133a where taxable paid-up capital does not exceed $1,200,000. Non-resident corporations qualifying for this low rate of capital tax under section 133a(3) are not subject to the capital tax calculated under the Special Rules above. However, in determining whether or not taxable paid-up capital exceeds $1,200,000, world paid-up capital must be used instead of the Canadian branch paid-up capital.

NUMERICAL CAPITAL TAX EXAMPLE

NON-RESIDENT CORPORATION
CANADIAN BRANCH (A WHOLLY ONTARIO OPERATION)
as at August 31, 1980

Canadian bank term deposit - 120 days	$100,000	Accounts payable	$200,000
Inventory	400,000	Home Office Account (including $80,000 profit for the year)	600,000
Building (at UCC)	300,000		
	$800,000		$800,000

Paid-up capital employed in Canada:

The greater of:

(a) Taxable income earned in Canada capitalized at 8% is $80,000/8% equals $1 million; and

(b) Paid-up capital employed in Canada otherwise calculated, that is, $600,000.

Taxable paid-up capital employed in Canada:

Paid-up capital employed in Canada calculated above	$1,000,000
Less: Investment allowance:	
$\frac{\$100,000}{\$800,000}$ x $1,000,000 = $125,000	
Maximum claim is the cost of the investments	(100,000)
	$ 900,000

Capital tax:

At 3/10 of 1% with no allocation to other provinces or territories	$2,700

NOTE:

In the above example, it is assumed that the world paid-up capital is greater than $1,200,000, therefore the corporation does not qualify for the reduced capital tax.

Ministry of Revenue
Ontario
Lorne Maeck
Minister
T.M. Russell
Deputy Minister

Corporations Tax Branch

Interpretation Bulletin

L-15 January 20, 1981

SUBJECT: Small Business Tax Credit on Depreciable Property

INTRODUCTION

The Ontario Budget brought down on April 22, 1980 introduced an incentive to encourage reinvestment by small business in the Province. It allows a credit against corporate income tax of up to 20% of the cost of new or used depreciable property purchased at arm's length after April 22, 1980 and before April 23, 1982 and put into business use in Ontario by the corporation.

This incentive was summarized in Information Bulletin Number 17-80. Legislation (Bill 53) to add the new section 36b to The Corporations Tax Act, 1972 (the Act) became law on June 17, 1980 and corresponding regulations (821/80) adding a new section 730 were filed on September 30, 1980.

NOMENCLATURE

The new incentive is referred to by the Branch as the "Small Business Tax Credit on Depreciable Property". Its calculation is shown under Item 10 on the CTS Schedule to the Corporations Tax Return CT23. It should not be confused with Item 9, the 4% "Incentive Deduction from Income Tax by Small Business Corporations" which is claimed under section 36 of the Act, nor the federal "Small Business Deduction" and "Investment Tax Credit" claimed under sections 125 and 127(5), respectively, of the Income Tax Act (Canada).

QUALIFICATION

To qualify for this incentive, a corporation must be a Canadian-controlled private corporation eligible for the 21% federal Small Business Deduction under subsection 125(1) of the Income Tax Act (Canada). A corporation which has not exceeded its total business limit but which cannot claim a deduction under subsection 125(1) solely because it has no income or no taxable income from active business (see paragraphs 125(1)(a) or (b)) is nevertheless considered to be eligible. Corporations eligible for 12 2/3% federal deduction under subsection 125(1.1) (professional, personal service and management service businesses) do <u>not</u> qualify for this incentive.

CALCULATION OF CREDIT

The credit to be claimed is the least of the following three factors:

A - 20% of the cost of eligible depreciable property (as described below);

B - the greater of:

I - $500, and

II - 20% of the Ontario income tax payable, after allocation, on income eligible for the federal subsection 125(1) Small Business Deduction; and

C - the Ontario income tax payable after deducting the 4% Incentive Deduction for Small Businesses, the 1% Manufacturing and Processing Credit and the Ontario Foreign Tax Credit.

The maximum credit for any year is $3,000. This occurs under factor B-II when the corporation's federal Small Business Deduction is based on the maximum annual business limit of $150,000 (i.e. 20% of $150,000 at 10% = $3,000).

Factor B-I ensures that a small business eligible for the federal subsection 125(1) Small Business Deduction which purchases $2,500 or more in eligible depreciable property in the year will have its Ontario income tax liability reduced by at least $500 (or to NIL) regardless of its income.

PRORATION

The limits set by factors B-II and C are reduced in years that straddle April 22, 1980 and April 23, 1982. The amount obtained under both of these factors is multiplied by X/365, where "X" equals the number of days in the taxation year after April 22, 1980 and before April 23, 1982. Note that this calculation also serves to reduce the amounts available when the taxation year contains less than 11 months. No proration is necessary for a year that is more than 11 months if it does not straddle either of the above dates.

YEAR OF CLAIM

The credit is claimed for the taxation year in which the depreciable property is purchased notwithstanding that the property may not be used in Ontario until a later year.

There is <u>no</u> carry forward or carry back of unused credits.

ELIGIBLE DEPRECIABLE PROPERTY

Depreciable property is property for which capital cost allowance (CCA) can be claimed under the Act. All CCA classes qualify. Both new and used depreciable property is eligible.

ELIGIBLE PURCHASE

An acquisition of depreciable property for CCA purposes is an eligible purchase for purposes of the incentive only if it occurs by way of an arm's length purchase. The following transactions are not eligible purchases:

- purchases from related persons
- purchases of materials, components or parts to be used in the construction or manufacture of depreciable property
- transfers from the corporation's own inventory
- rental payments (except as noted below under "LEASE OPTIONS).

DATE OF PURCHASE

The guidelines set out in Revenue Canada Interpretation Bulletin IT-50R for determining the date of acquisition of depreciable property for CCA purposes will be used to determine the date of purchase for purposes of the Small Business Tax Credit on Depreciable Property.

ELIGIBLE COSTS

The cost of eligible depreciable property is the purchase price and the related installation costs, excluding any legal, accounting, engineering and other fees incurred to purchase the property. This cost is not reduced by the amount of any government grant, investment tax credit, or other government assistance relating to the purchase which generally reduces cost for capital cost allowance purposes.

LEASE OPTIONS

Rental of depreciable property by a lessee is generally not considered to be an eligible purchase for purposes of the incentive. The corporation may, however, rent the property under circumstances which are classified under the guidelines set out in federal bulletin IT-233 as a purchase in determining eligibility for Capital Cost Allowances. In these circumstances the acquisition is eligible for the incentive credit. The eligible cost is the capital cost of the depreciable property as described above.

In other cases a corporation may exercise an option to purchase an asset already being leased. This will also be an eligible acquisition for this incentive if the option is exercised during the qualifying period. The eligible cost will be the option price.

ELIGIBLE USES

In order to qualify for the credit, the depreciable property must be used by the corporation in Ontario for the purpose of earning income from a business. However, it need not be used exclusively in the Province.

"Use" in this context means the use for which the property was created and excludes the use of the property to earn rental income or to carry out a "specified investment business" as defined in paragraph 125(6)(h) of the Income Tax Act (Canada).

PARTNERSHIPS

Depreciable property purchased and used by a partnership may be claimed for credit by any of the corporate partners. The eligible cost is divided among partners in proportion to their profit sharing ratios in the partnership.

EFFECT ON CAPITAL COST ALLOWANCE

The Small Business Tax Credit on Depreciable Property is a "deduction from tax" for purposes of subsection 13(7.1) of the Income Tax Act (Canada) as made applicable for Ontario purposes by section 14(1) of the Act. Therefore, capital cost for federal and Ontario CCA purposes is reduced in the year in respect of which the credit is claimed, by the amount of the credit claimed.

Where the credit claimed is less than 20% of eligible depreciable asset purchases, it may be allocated to CCA classes as desired, provided that the amount applied to any class does not exceed 20% of the eligible purchase costs for that class.

CIRCULAR CALCULATION

In most cases the calculation of the credit will be straightforward. However, when the limiting factor is either of items 10 B-II or 10 C on the CTS Schedule, the calculation can become complicated, especially if the credit calculated affects the CCA and income for the year which in turn results in a revised amount of credit. In this situation, a notional calculation similar to those described in paragraph 19 of federal Interpretation Bulletin IT-331 may be used to determine precisely the amount of the credit.

NUMERICAL EXAMPLE

A corporation with 100% allocation to Ontario has a short taxation year beginning April 1, 1980 and ending December 31, 1980. The eligible costs of depreciable property purchases after April 22, 1980 are $10,000, the same as capital costs for Capital Cost Allowance purposes (class 29 - $6,000; class 8 - $4,000). Income for the year before CCA is $50,000 all of which qualifies for the 4% Incentive Deduction from Income Tax by Small Business. The corporation is entitled to a 7% federal Investment Tax Credit on these assets.

Solution - To ease the calculation of the Small Business Tax Credit on Depreciable Property the following steps may be used:

(1) calculate the notional CCA
(2) calculate the Credit as indicated in Item 10 of the CTS Schedule
(3) calculate the actual CCA using a cost base reduced by this Credit
(4) calculate the Ontario Income Tax Payable as indicated on Item 4 of the CT23 return.

Approximate Calculation (excerpt from 1980 CT23 Tax Return and CTS Schedule)

4. Income Tax (Guide 3) (Record Dollars only)

Taxable Income — Ontario Allocation

8 $ 46,595 X 9 100 % X 14% = 10 $ 6,523 .00

OR Non-Capital Loss For Carry-Back Only

11 $ ____ Enter Nil in 21

LESS: Incentive Deduction by Small Business Corporations under Federal s.125(1) [X] or s.125(1.1) [ ] check applicable box from 94 — 12 $ 1,863

\+ Small Business Tax Credit on Depreciable Property from 112 — 13 $ 644

\+ Manufacturing and Processing Profits Credit from 124 — 14 $ NIL

\+ Ontario Foreign Tax Credit — 15 $ NIL

\+ Credit for Investment in Small Business Development Corporations — Eligible Credit 16 $ ____ Credit claimed 17 $ NIL

\+ OMEP Credit — Eligible Credit 18 $ ____ Credit claimed 19 $ NIL

See Item 10 — minus (−)

= 20 $ 2,507 .00

Income Tax = 21 $ 4,016 .00 to 1

10. Small Business Tax Credit on Depreciable Property (Guide 3d)

Least of

A — Cost of Eligible Property Purchased 95 $ 10,000 X 20% = 96 $ 2,000 .00

OR

B — Greater of I or II: If the length of the taxation year is more than 11 months but less than 365 days, do not prorate for short taxation year

I $500 — 97 $ 500

OR

II 20% of amount of tax that would be payable after allocation, calculated on income eligible for Federal Small Business Deduction under Federal s.125(1).

98 $ 46,466 (91 x 93) x 10% = 99 $ 4,647 to 100

100 $ 4,647 (from 99) X 20% X No. of days in taxation year after April 22, 1980 but before April 23, 1982 101 253 ÷ 365 = 102 $ 644 — 103 $ 644 .00

OR

C — Ontario Income Tax Payable after Deduction of Incentive Deduction by Small Business Corporations, Manufacturing and Processing Profits Credit and Ontario Foreign Tax Credit.

104 $ 6,505 (from 10) − (105 $ 1,859 (from 12) + 106 $ NIL (from 14) + 107 $ NIL (from 15)) = 108 $ 4,646 (to 109)

109 $ 4,646 (from 108) x No. of days in taxation year after April 22, 1980 but before April 23, 1982 110 253 ÷ 365 = 111 $ 3,220 .00

IS

Small Business Tax Credit on Depreciable Property — Least of 96, 103 or 111 = 112 $ 644 .00 to 13

NOTES

Box 98: 50,000 − 3,534 (notional CCA) = 46,466
104: 46,466 x 14% = 6,505
105: 46,466 x 4% = 1,859

Box 8: 50,000 − 3,405 (actual CCA) = 46,595
12: 46,595 x 4% = 1,863

Notional Capital Cost Allowance Schedule (Before Credit)

	Undepreciated Capital Cost (UCC) April 1, 1980	Additions	Federal Investment Tax Credit at 7%	CCA — Ignoring Small Business Tax Credit on Depreciable Property	UCC December 31, 1980 — Ignoring Small Business Tax Credit on Depreciable Property
Class 8	NIL	4,000	(280)	3,720 @ 20% = (744)	2,976
Class 29	NIL	6,000	(420)	5,580 @ 50% = (2,790)	2,790
	NIL	10,000	(700)	(3,534)	5,766

Final Capital Cost Allowance Schedule (Reflecting Credit)

	UCC before CCA as above	Small Business Tax Credit on Depreciable Property (calculated above)	CCA — Considering Small Business Tax Credit on Depreciable Property	UCC December 31, 1980 — Considering Small Business Tax Credit on Depreciable Property
Class 8	3,720	(644)*	3,076 @ 20% = (615)	2,461
Class 29	5,580	NIL	(2,790)	2,790
	9,300	(644)	(3,405)	5,251

*Up to $4,000 at 20% = $800 can be attributed to Class 8 purchases; deducting the credit against Class 29 would reduce the maximum CCA claim for the year to ((5,580 - 644) x 50%) + (3,720 x 20%) = 3,212.

Precise Calculation

Further calculations may be performed using a CCA of $3,405 rather than the notional $3,534 used above. Item 10 B-II becomes:

$$(50,000 - 3,405) \times 10\% \times 20\% \times \frac{253}{365} = 646$$

As can be seen, the gain in precision of repeating the calculations is minimal.

Ontario
Ministry of Revenue
Lorne Maeck
Minister
T.M. Russell
Deputy Minister

Corporations Tax Branch

October 15, 1979

Les bulletins sont disponibles en français sur demande à la Direction de l'impôt sur les corporations, Ministère du Revenu, Queen's Park, Toronto, Ontario M7A 1Y1 Téléphone: 965-1160

NON-RESIDENT ENTERTAINERS

SUBJECT: Collection of Tax Payable by Non-Resident Entertainers - Section 148a and Regulation 728

INTRODUCTION

Incorporated non-resident entertainers that are deemed to maintain a permanent establishment in the Province under the provisions of section 7(8) of the Act are now subjected to withholding of Ontario corporations tax at source.

DEEMED PERMANENT ESTABLISHMENT

Non-resident corporations that produce or present any form of entertainment by means of a performance on a public stage or in an auditorium or other public place in Ontario in a taxation year are deemed to have maintained a permanent establishment in the Province by section 7(8) of the Act.

WITHHOLDING

Section 148a of the Act requires persons making payments to such corporations to deduct 5% of those payments on account of the non-resident's Ontario corporations tax instalments payable to the Province. The person making the deductions is also required to forward the amounts withheld to the Branch together with a quarterly report (see below). No legal action can be taken by an entertainer or producer against any person making such a withholding in intended compliance with the Act.

NON-COMPLIANCE

Any person making a payment to an incorporated non-resident entertainer or producer who fails to deduct the 5% is liable to pay that amount plus accrued interest for late remittance to the Province. He is then entitled to recover that payment from the non-resident.

A person who withholds but fails to remit the 5% is, in addition, liable for a penalty of 10% of the amount of the withholding or $10, whichever is greater.

EFFECTIVE DATE

The withholding provision applies in respect of all public entertainment performances presented in Ontario on or after May 18, 1979. The first quarterly report and payment of

withholdings to the Province related to the period ended June 30, 1979 and was due on or before August 31, 1979.

The required "Non-Resident Corporation Remittance" report form is available from Tax Roll Unit of the Branch (77 Bloor Street West, Toronto, 12th Floor, Telephone (416) 965-1004). It is reproduced on pages 5 and 6.

ASSESSMENT

After the corporate entertainer or producer has filed a CT23 Tax Return with the Branch for the taxation year, the non-resident corporation will be assessed and all amounts forwarded in its name will be applied to its account. Any balance remaining to the corporation's credit will then be refunded.

GUIDELINES FOR ONTARIO ENTERTAINMENT PROMOTERS

Promoters should be aware of resident or non-resident status of the entertainers and producers they promote in Canada since they are required to file a "Confirmation of Offer of Employment" form with Employment and Immigration Canada in respect of the latter group.

The following guidelines are provided to assist promoters of entertainment in Ontario to determine whether non-resident entertainers and producers are corporations:

(a) Does the non-resident individual have a corporation?

(b) Is the contract signed on behalf of a non-resident corporation?

(c) Are payments to be made to a non-resident corporation or are payments to be deposited in the account of a non-resident corporation?

Should any of the above questions be answered in the affirmative, it will be necessary to withhold an amount as required under section 148a of the Act.

Should all of the above questions be answered in the negative and should the promoter have no other reason to suspect that the non-resident entertainer or producer may be a corporation, then no withholding under section 148a is required.

Where credible answers to the above questions cannot be obtained or where a person making a payment to a non-resident cannot determine whether the person to whom the payment is being made is a corporation, he should obtain a signed statement from the entertainer, or producer (not his agent) in the form shown below. If he cannot obtain the certification, he should withhold tax.

- Signed Certification to be obtained from the non-resident individual

"TO WHOM IT MAY CONCERN

I, ________________ , certify that I do not con-
FULL NAME (PRINT)
trol directly, or indirectly, any corporation which presents or produces any form of entertainment on a public stage within or outside Canada; and the proceeds earned from the attached entertainment contract flow only to me and no corporation has any interest in these proceeds other than as agent."

____
SIGNATURE

The statement should be forwarded with a copy of the contract to this Branch to the attention of the Audit Section. No withholding is required when this certificate is obtained.

- Caution

Before signing the statement the entertainer must be made aware of the implications of false statements under the provisions of section 146(3) of The Corporations Tax Act, 1972, which read in part as follows:

"(3) Every person who has,

(a) made, or participated in, assented to or acquiesced in the making of, false or deceptive statements in a return, certificate, statement or answer delivered or made as required by or under this Act or the regulations;

(b) -

(c) -

(d) wilfully in any manner evaded or attempted to evade compliance with this Act or payment of taxes imposed by this Act; or

(e) conspired with any person to commit an offence described by clause a to d,

is guilty of an offence and, in addition to any penalty otherwise provided by this Act, is liable on summary conviction to a fine of not less than $25 and not more than $10,000 plus, in an appropriate case, an amount of not more than double the amount of the tax

that should have been shown to be payable or that was sought to be evaded, or to imprisonment for a term of not more than two years, or to both fine and imprisonment."

CORPORATIONS NOT AFFECTED

It should be emphasized that these withholding provisions apply only to incorporated non-resident entertainers or producers that are deemed to maintain an Ontario permanent establishment by virtue of section 7(8) of the Act. Although an admission fee need not be charged, there must be a live, public performance in the Province for this provision to apply. Non-resident corporations involved in the production of feature films or videotaped television commercials, for example, are not subjected to withholding since their public performances are on film or tape rather than being live. On the other hand, a non-resident corporation providing entertainment to patrons of a public restaurant would be subjected to withholding, even if no cover-charge applied.

REFUNDS

Persons on whose behalf withholdings have been remitted to the Province who were not liable and are not otherwise liable or are not about to become liable to pay Ontario corporations tax may obtain a refund by applying to the Branch in writing within two years from the end of the calendar year in which the amounts were remitted.

Ontario

Ministry of Revenue

Corporations Tax Branch

Queen's Park
Toronto, Ontario
M7A 1Y1

Non-Resident Corporation Remittance

See instructions on reverse

Name and Address of Person Remitting Payment

Covering The Period

From	To
	Page of

Name of Non-Resident Corporation	Mailing Address	Ontario Corporations Tax Account Number	Taxation Year-End	Period of Performances	Total Payment	Amount Withheld
				Total	$	$
				Total Amount Remitted	$	

Declaration: I certify that this report has been examined by me, is a true, correct and complete report and that the information is in accordance with the books of the company.

Signature of Authorized Person	Date

79/06 02123

Guidelines

1. **REQUIREMENTS** — Any person making a payment to a non-resident corporation as consideration for the production or presentation of any form of entertainment is required by Section 148a to withhold 5% of the payment and remit the amount to the Treasurer of Ontario on behalf of the non-resident corporation's taxes payable under The Corporations Tax Act, 1972.

2. **NON-RESIDENT CORPORATION** — A corporation incorporated under the laws of a jurisdiction outside Canada.

3. **WHETHER THE NON-RESIDENT IS A CORPORATION** — In determining whether a non-resident is a corporation the following guidelines should be used:

   (a) Does the non-resident individual have a corporation;

   (b) Is the contract signed on behalf of a non-resident corporation;

   (c) Are payments to be made to a non-resident corporation or are payments to be deposited in the account of a non-resident corporation.

   (d) Where a person making a payment to a non-resident cannot determine whether the person to whom the payment is being made is a non-resident corporation, he should require the person receiving the payment to affirm in writing that the payment is not being made to a non-resident corporation.

4. **ENTERTAINMENT** — For the purpose of Section 7 (8) of The Corporations Tax Act, 1972, entertainment is interpreted as a live performance, such as singing, dancing, etc., presented on a public stage for which there is an admission charge.

5. **FILING** — The report together with the amount withheld is to be filed with the Corporations Tax Branch, Queen's Park, Toronto, Ontario M7A 1Y1 within two months of the end of each calendar year quarter.

6. **LOSS** — Where a non-resident corporation will not have any taxable income from its performance(s) in Ontario, it should submit, prior to its performance(s) in Ontario, to the Corporations Tax Branch a statement of its estimated revenues and expenses. If this statement is acceptable to the Corporations Tax Branch, a letter will be issued to the person that is required to withhold the 5% amount informing him that no amount or that a lesser amount should be withheld.

7. No action lies against any person, by the non-resident corporation, for deducting or withholding any sum of money in compliance or intended compliance with Section 148a.

NOTE: These guidelines are by no means exhaustive and due care should be exercised in each case.

Instructions for Completion

1. **NAME AND ADDRESS OF PERSON REMITTING PAYMENT** — Indicate the complete name and address of the person or corporation that has withheld and is remitting the required amount.

2. **COVERING THE PERIOD** — The report is to be filed for three-month periods commencing on the first day of January, April, July and October and ending on the last day of March, June, September and December, respectively.

3. **PAGE OF** — If more than one page of the report is required, indicate each page number and the total number of pages.

4. **NAME OF NON-RESIDENT CORPORATION** — Indicate the complete name of the non-resident corporation for which the amount is being remitted.

5. **MAILING ADDRESS** — The complete mailing address of the non-resident corporation.

6. **ONTARIO CORPORATION TAX ACCOUNT NUMBER** — Indicate the non-resident corporation's account number if available.

7. **TAXATION YEAR-END** — Indicate the taxation year-end of the non-resident corporation.

8. **PERIOD OF PERFORMANCES** — The date(s) of the performance(s) presented or produced by the non-resident corporation.

9. **TOTAL PAYMENT** — The total amount of the payment(s) made to the non-resident corporation in Canadian dollars.

10. **AMOUNT WITHHELD** — 5% of the total payment made to the non-resident corporation in Canadian dollars.

11. **TOTAL** — The totals of the **Total Payment** and the **Amount Withheld** for each page submitted.

12. **TOTAL AMOUNT REMITTED** — The total of the amounts remitted on behalf of the non-resident corporations. Complete only on the last page of the report if more than one page.

13. **SIGNATURE OF AUTHORIZED PERSON AND DATE** — The signature of the person that is making the remittance.

Ministry of Revenue
Ontario

Bud Gregory
Minister

T.M. Russell
Deputy Minister

Corporations Tax Branch

Interpretation Bulletin

Number 2617 March 1984

Les bulletins sont disponibles en français sur demande à la Direction de l'impôt sur les corporations, Ministère du Revenu, CP 622, 33 King Street West, Oshawa, Ontario L1H 8H6
Téléphone: Oshawa (416) 433-6500 ou Toronto 965-1160 poste 6500

SUBJECT: ALLOCATION OF INCOME

INTRODUCTION

This Bulletin describes some factors that are considered in determining whether a corporation has a permanent establishment in a jurisdiction. The bulletin further describes factors used in determining "gross revenue" and "salaries and wages" for allocation purposes and the special formula which is used for Finance, Trust and Loan corporations.

EXISTENCE OF A PERMANENT ESTABLISHMENT

In addition to other situations, a corporation has a permanent establishment in a jurisdiction if any of the following apply:

- an employee who has authority to contract on behalf of the corporation, is able to bind the corporation in most sales transactions, and exercises this authority repeatedly;
- there is an agent (other than an independent agent) with authority to contract on behalf of the corporation;
- an employee or agent has a stock of merchandise owned by the corporation from which he regularly fills orders which he receives. "Regularly" means conforming to an established pattern. A permanent establishment exists even if only a small percentage of the total sales in a province were filled from the stock within the province;
- a showroom where orders are normally taken is classed as an office and hence a fixed place of business of the corporation;
- there is an office of the corporation in a salesman's residence;

- the corporation uses substantial machinery or equipment in the jurisdiction. This refers to use by the corporation itself, not by a subcontractor engaged by the corporation. "Substantial" means substantial to the job being done, i.e. could the job be performed without the equipment no matter what the size or cost. Machinery and equipment of a leasing business does not qualify as a permanent establishment. The equipment must be for the company's own use and not merely for rental;

- the corporation is a member of a partnership, including a limited partnership, and the partnership has a permanent establishment in that jurisdiction.

BUS AND TRUCK OPERATORS

In the case of bus and truck operators the following circumstances do <u>not</u> constitute a permanent establishment:

- driving through a jurisdiction,

- holding a permit or a license to operate in a jurisdiction,

- use of a warehouse or depot that is not owned nor rented and controlled by the corporation,

- loading and unloading trucks in a jurisdiction.

Allocation must be made only to those jurisdictions where a permanent establishment is maintained.

GROSS REVENUE FOR ALLOCATION PURPOSES

The following items should be excluded from gross revenue:

- volume discounts received from suppliers,

- discounts earned for early payment to the suppliers,

- proceeds from the sale of scrap where this activity is not the principal business of the corporation,

- reimbursement for out-of-pocket expenses. Such reimbursements should reduce the appropriate expense,

- retail sales tax and other similar taxes such as export taxes for which the corporation is acting solely as a collector.

Volume discounts paid to customers (other than lump-sum payments at the end of the year) should be deducted in arriving at gross revenue.

SALARIES AND WAGES FOR ALLOCATION PURPOSES

- Salaries and wages are allocated to the permanent establishment to which the employee is attached even though he may sometimes travel to perform duties elsewhere.

- Taxable benefits paid to officers and employees and allowed as a deduction to the corporation are to be included in salaries and wages.

- Commissions paid to an independent agent are not included in salaries and wages.

- Fees paid to directors who are not employees should be excluded from salaries and wages.

ALLOCATION OF GROSS REVENUE:

FINANCE, TRUST OR LOAN CORPORATIONS

- Trust and loan companies use a special formula in allocating taxable income and taxable paid-up capital which includes gross revenue only and excludes salaries and wages.

- A corporation that is not registered as a trust or loan corporation whose principal business is the making of loans must use this special formula.

- Finance and acceptance corporations whose principal activity is discounting commercial paper as opposed to direct money-lending, are <u>not</u> considered to be loan corporations and must use the normal formula, using both gross revenue and salaries and wages.

- Subsection 302(8) of the regulations under the Corporations Tax Act (Ontario) excludes income from certain types of property from gross revenue for allocation purposes. However, this provision does not apply to a corporation using the special allocation formula for Trust and Loan Corporations. In such cases the property income is considered to arise from the taxpayer's business and therefore forms part of gross revenue.

PUBLISHING CORPORATIONS

- Advertising revenue is allocated on the basis of units of circulation in a jurisdiction.
- Circulation revenue is allocated on the basis of destination of shipment of publications.
- Other revenue is allocated on the same basis as regular sales.

LEASING CORPORATIONS

Gross revenue is allocated to the office that negotiates the lease.

PERMANENT ESTABLISHMENT - PART OF THE YEAR

If a permanent establishment exists for any part of a year, the gross revenue for the whole year arising in that jurisdiction should be allocated to that permanent establishment.

Ministry of Revenue
Ontario

Bud Gregory
Minister

T.M. Russell
Deputy Minister

Corporations
Tax Branch

Interpretation Bulletin

Number 2618 March 1984
Revises L-6, August 14, 1978

SUBJECT: Management Fees, Rents, Royalties, Rights, etc.
Subsections 12(6), 12(6a)

GENERAL

Subsection 12(6) of the Corporations Tax Act provides that 5/15ths of management fees, rents, royalties and similar payments to a non-resident with whom the corporation is not dealing at arm's length are to be included in income.

1982 BUDGET AMENDMENTS

Bill 114 (Chapter 19, S.O. 1982) made two amendments regarding these types of payments, effective for payments made after May 13, 1982.

Firstly, where the non-resident recipient has included the payment in taxable income earned in Canada, the add-back is not required. Previously, the add-back was not required as long as the non-resident was liable for Ontario Corporations taxes.

Secondly, subsection 12(6a) was added to deal with 5/15ths type payments that are channelled to non-residents through other provinces. The provision will apply where the payment is made to a related person in another province and that person, directly or indirectly, makes a payment to a non-resident person who is related to the Ontario payor corporation in respect of the service provided to or property used by that Ontario payor corporation.

CHANGE IN RATE - BILL 38, 1983

Bill 38 (Chapter 29, S.O. 1983) changed the portion of payments to related non-residents to be included in income from 5/14ths to 5/15ths after May 10, 1983.

For the taxation year that straddles May 10, 1983 this change applies on a pro-rata basis. 5/14ths of the payments in the year should be prorated for the number of days before May 11, 1983 and 5/15ths for the number of days after May 10, 1983. The aggregate of the two amounts should be included in income.

CLASSES OF PAYMENTS

Payments which must be partially brought into income under these provisions fall into the following categories:

a) Management or administrative fees or charges.

b) Rents, royalties or similar payments. Examples are:

- know-how payments for special knowledge, skill or techniques,
- technical fees for the use of confidential technical information,
- payments for the use, in Canada, of any property, invention, trade mark, design or model plan, secret formula, process, trade name or patent,
- certain payments for services of an industrial, commercial or scientific character performed by a non-resident person,
- certain payments made to a non-resident to ensure that property or information will not be used by the non-resident or any other person.

c) A right in, or to the use of motion picture film, or films or video tapes for use in connection with television, that have been or are to be used or reproduced in Canada.

SCOPE OF INCLUSION IN INCOME

Amounts in these categories must be included in income when they are paid or payable to non-residents with whom the corporation is not dealing at arm's length.

They are to be included in income in the same taxation year in which they are subjected to federal withholding tax under paragraphs 212(1)(a), (d) or (e) or subsection 212(5) of the Income Tax Act (Canada).

PAID OR PAYABLE

Amounts are considered to be paid or payable when:

- monies have been forwarded in the form of cash, cheque, money order or bank draft;
- cash has been deposited in a special bank account in favour of the payee who can draw upon it at any time;
- a legal obligation to pay has been incurred and the corporation has disclosed the liability in its books of account and balance sheet.

For this purpose the Branch follows the guidelines outlined in Information Circular No. 77-16R, dated May 4, 1981, published by Revenue Canada.

FILING REQUIREMENTS

The inclusion in income of 5/15ths of these payments to non-residents should be shown on the schedule reconciling net income per books with taxable income for Ontario purposes. The amounts should be added to income in arriving at taxable income

Copies of federal forms NR4 Summary and Supplemental filed with Revenue Canada in respect of these payments should be attached to the CT23 return. This will avoid requests for these forms at a later date.

Ontario
Ministry of Revenue
Bud Gregory
Minister
T.M. Russell
Deputy Minister
Corporations Tax Branch

Interpretation Bulletin

Number 2619 April 1985

Subject: Capital Tax Implications of Rollovers

INTRODUCTION

The Income Tax Act (Canada) (ITA) contains provisions to permit a deferral of income tax in certain asset transfers (i.e. "rollovers"). The tax effect of the transaction on the vendor is deferred and assumed by the purchaser. This Bulletin deals with the capital tax, as distinguished from the income tax, implications of assets being transferred (rolled over) to a corporation.

Ontario is generally tied-in with the federal rollover rules for income tax purposes. However, a taxpayer may elect a different amount than that used for federal purposes within the rollover rules, to ensure a deferral of Ontario income tax. There are no corresponding capital tax provisions to permit a deferral of Ontario capital tax or the transfer of the vendor's capital tax position to the purchaser.

SECTION 85 ITA ROLLOVERS - PROPERTY TRANSFERRED TO CORPORATION

Section 85 of the ITA provides special rules that establish the tax values of assets that are transferred to a taxable Canadian corporation by an individual, a partnership or a corporation. A joint election is made by the transferor and the corporation. Consideration for the assets transferred must include shares in the corporation. The value of the shares as shown on the balance sheet is included in paid-up capital. There is no provision within the Corporations Tax Act to reduce this amount for capital tax purposes where the value of the assets received as consideration for the shares issued differs for tax and book purposes.

Different Depreciation Booked and Capital Cost Allowance Claimed - Clauses 54(3)(b) and (c)

A corporation is required to include in paid-up capital any amount by which the value of an asset has been written down and deducted from income or retained earnings if that amount is not deductible in computing income for tax purposes. Accordingly, the excess of accumulated depreciation booked over accumulated capital cost allowance claimed for income tax purposes must be included in computing paid-up capital. Conversely, the excess of accumulated capital cost allowance claimed over accumulated depreciation booked is deducted in computing paid-up capital. Further information on this subject is contained in Interpretation Bulletin number L-9R.

A similar adjustment to paid-up capital may apply where depreciable property is rolled over to a corporation under section 85 of the ITA, but only in so far as the amounts are deducted by the acquiring corporation itself. No adjustment should be made for the difference in accumulated depreciation and accumulated capital cost allowance deducted by the former owners. The reason for this is that surplus has not been transferred to the acquiring corporation and an adjustment to restore surplus to a tax position is not necessary. The amount relevant for capital tax adjustment is actual C.C.A. deducted and not any C.C.A. deemed to have been claimed for income tax purposes.

Depreciation Adjustment - An Administrative Concession

Where the acquiring corporation reflects the asset at fair market value in its financial statements but jointly elects a lesser amount under s.85 of the ITA (for example, the undepreciated capital cost to the vendor), the difference is not deductible from paid-up capital. However, as an administrative concession (see Interpretation Bulletin L-16), the acquiring corporation is allowed to amortize the difference between the financial statement value and the U.C.C. at the effective rate used to claim C.C.A. This is the C.C.A. rate obtained by dividing the C.C.A. claimed by the undepreciated capital cost on which it is based (i.e. C.C.A. claimed for the year ÷ U.C.C. before C.C.A. claim). This concession applies to reduce paid-up capital for capital tax purposes only. The adjustment is calculated on a cumulative annual basis.

The same concession also applies to eligible capital expenditures which are being written-off for income tax purposes. In such cases, the acquiring corporation may amortize the difference between one-half of the amount booked and the amount elected for income tax purposes at the effective rate used for claiming the deduction for cumulative eligible capital (not exceeding 10%), on a cumulative basis.

Where no C.C.A. or amortization of eligible capital expenditures is claimed for income tax purposes, no depreciation adjustment is allowed for capital tax purposes.

SECTIONS 87 AND 88 ITA ROLLOVERS - AMALGAMATION AND WINDING-UP OF A SUBSIDIARY

Assets may also be rolled over to a new corporation created as a result of an amalgamation (section 87 of the ITA) or to a parent corporation following winding-up of a subsidiary (section 88 of the ITA). In such situations the acquiring corporation may report the assets at a higher value or at the book value of the predecessors or subsidiary, as the case may be.

- Assets Transferred at Values Higher than Previous Book Values

Where the acquiring corporation reports the assets at a value higher than the predecessors/subsidiary's book values, that higher value is recognized for capital tax purposes. In such cases, the acquiring corporation is allowed a concession in the same manner as the concession for s.85 rollovers.

- Assets Transferred at Same Values as Previous Book Values

Where assets are transferred at the predecessors/subsidiary's book values, the acquiring corporation is allowed to carry forward the differences between accumulated depreciation booked and accumulated capital cost allowance claimed by the predecessor corporations. In such cases, the concession is not allowed to the new/parent corporation.

Under these rollover transactions, the surpluses (retained earnings) of the predecessor/subsidiary corporations may be transferred to the continuing corporation. In such cases, surplus adjustments of the predecessor/subsidiary corporations should be carried forward to the new/parent corporation for purposes of adjusting its paid-up capital.

SECTION 97 ITA - CONTRIBUTION OF PROPERTY TO PARTNERSHIP

Assets transferred to a partnership may be reported for financial statement purposes by the partnership at a value higher than the elected tax value. In such situations, the foregoing principles should be used to determine if the concession will apply.

TAXPAYER ENQUIRIES

Taxpayers who require further clarification of matters discussed in this Bulletin can contact the Tax Specialists section of the Corporations Tax Branch at:

33 King Street West
Oshawa, Ontario
L1H 8H6
Telephone: (416) 433-6513
Toronto Line: 965-1160 Ext. 6513

Ontario
Ministry of Revenue
George Ashe
Minister
T.M. Russell
Deputy Minister

Corporations Tax Branch

Interpretation Bulletin

L-14R November 24, 1981

SUBJECT: Family Farm/Family Fishing Corporation - Capital Tax

NOTE: Legislative References are to the Corporations Tax Act, R.S.O. 1980

CAPITAL TAX - $50 (Subsection 63(2), the Corporations Tax Act, R.S.O. 1980)

Subsection 63(2) (previously Section 135(2) of The Corporations Tax Act, 1972) provides for the payment of an annual capital tax of $50 by corporations which qualify as family farm corporations or family fishing corporations. The flat $50 tax is payable in lieu of tax computed at the regular rates that would otherwise apply. It is effective for taxation years ending after April 9, 1974 for family farm corporations and for taxation years ending after April 22, 1980 for family fishing corporations.

Changes have become necessary as a result of the coming into force of Bill 79/81 which received Royal Assent on October 30th, 1981 to legislate amendments to the Corporations Tax Act proposed in the Ontario Budget of May 19, 1981.

QUALIFICATION (Clauses 1(1)(d), (e))

Taxation years ending after May 19, 1981

Each of the following conditions must be met by a corporation throughout a taxation year to qualify as a family farm (fishing) corporation:

- the corporation must carry on the business of "farming" ("fishing") in Ontario through the employment of a shareholder or a "member of his family" actually engaged in the operation of the business

- all the issued, voting shares collectively should be owned by

  - One individual alone, or
  - One individual together with members of his family
- Both the individual and those members of his family must be ordinarily resident in Canada
- At least <u>75%</u> of the net book value (excluding appraisals) of the assets must be "farming assets" ("fishing assets")
- Mortgages taken back on the sale of farm land, buildings, equipment, machinery, and live stock qualify as farming assets, if the other farming assets, as defined, are not less than 50% of all assets.

<u>Taxation years ending on or before May 19, 1981</u>

In order to qualify as a family farm/ fishing corporation, at least <u>95%</u> of the net book value (excluding appraisals) of the assets must be "farming assets" ("fishing assets") and mortgages taken back on the sale of farm land do not qualify as farming assets.

FARMING (Clause 1(1)(b))

Farming includes the following operations:

- tillage of the soil
- livestock raising or exhibiting
- raising of poultry
- fur farming
- dairy farming
- fruit growing
- the keeping of bees
- sharecropping in those cases where the landowner assumes an appropriate share of the farming risk.

The maintaining of horses for racing is excluded from the definition for purposes of defining a family farm operation.

FISHING (Clause 1(1)(a))

The definition of fishing provided in subsection 248(1) of the Income Tax Act (Canada) is adopted for Ontario purposes.

It includes fishing for or catching

- shell fish
- crustaceans, and
- marine animals.

EMPLOYMENT OF A SHAREHOLDER OR MEMBER OF HIS FAMILY

- The shareholder or family member should be an employee of the corporation. This means that he should be performing some service for which he is entitled to salary, wages or other remuneration paid by the corporation.

- The shareholder or family member should be employed full-time by the corporation in the operation of the business. If he holds a full-time job elsewhere and employs a manager or gives directions on a part-time basis on what work should be carried out, the business would not qualify as a family farm corporation or family fishing corporation.

- The services performed by the shareholder or family member should be farming or fishing services, e.g. supervising employees or operating implements and not just bookkeeping or advisory services.

FARMING ASSETS (Clause 1(1)(f))

Farming assets of a family farm corporation are generally those assets that would normally be used in a farming operation. These are:

- cash, trade accounts receivable, supplies and inventory of farm production

- land, buildings, equipment, machinery and livestock that are used chiefly in the farming operation

- a government right or licence that permits or regulates the production or sale of any farming commodity

- the residence of the shareholder or any of his family engaged in the operation of the farm if the residence is on or contiguous to land used in the farming operation

- investments in shares of, or loans and advances to, another family farm corporation.

Other investments such as bonds and shares of corporations (except other family farm corporations) do not qualify as farming assets.

FISHING ASSETS (Clause 1(1)(g))

Fishing assets of a family fishing corporation are generally those assets that normally would be used in a fishing operation. These are:

- cash, trade accounts receivable, supplies and inventory used in the fishing business by the corporation

- land, buildings, boats, ships, equipment, machinery and nets that are used chiefly in the operation of the fishing business by the corporation

- any right or licence granted or issued under any Act of the Legislature that permits or regulates the catching or sale of fish

- investments in shares of, or loans and advances to, another family fishing corporation.

MIXED OPERATIONS

In some cases a farmer will carry on mixed operations such as the growing of produce and the sale of sand and gravel removed from the farm property. Farming equipment (e.g. tractors, trucks) may be used in both operations. These assets will still qualify as farming assets providing they are used primarily in the farming operation.

The above will also apply to fishing assets where mixed operations are carried on.

MEMBER OF HIS FAMILY (Clause 1(1)(i))

Members of a shareholder's family include:

- spouse

- children

- father, mother, brothers, sisters, nephews or nieces

- uncles, aunts or cousins

- fathers-in-law or mothers-in-law, brothers-in-law or sisters-in-law or their children
- sons-in-law or daughters-in-law
- grandfathers or grandmothers
- persons adopted under The Child Welfare Act or the spouse or any lawful descendant of such person.

INCOME TAX

Family farm corporations and family fishing corporations are required to pay the ordinary rates of Ontario corporations tax on taxable income, that is: 14% (reduced to 10% on small business income, and to 13% for farming, fishing and other eligible profits that do not qualify for the small business rate). This bulletin applies only to tax on paid-up capital.